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Trivandrum, Monday, 27th June 1955|13th Mithunam 1130.

ELECTION COMMISSION,
INDIA.

New Delhi,
7th May 1955.

NOTIFICATION.

No. 82/8/54/5710. Whereas the Election of Shri K. C. Abraham of Manapilly, Ayyampilly, as a member of the Legislative Assembly of the State of Travancore-Cochin from the Narakkal constituency of that Assembly, has been called in question by an Election Petition duly presented under part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Shri Mathai Mathew Manjuran, Pachalam Municipal Town, Ernakulam, Travancore-Cochin State;

And Whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its Order to the Commission;

Now, Therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

ELECTION TRIBUNAL, ERNAKULAM.

IN THE MATTER OF THE ELECTION TO THE TRAVANCORE-COCHIN STATE LEGISLATIVE ASSEMBLY FROM NARAKKAL CONSTITUENCY AT THE ELECTION HELD ON 15—2—1954.

Election Petition No. 8/1954.

Wednesday, the 20th day of April 1955.

CORAM

Sri K. Sankaranarayana Iyer, Retd. District and Sessions Judge	Chairman.
Sri P. D. Thomman, District and Sessions Judge, Trichur. Sri T. S. Venkitachala Iyer, Advocate, Trichur.	Members
Mathai Mathew Manjuran, residing at Pachalam, Municipal Town Ernakulam (T. C. State)	Petitioner.

By advocates Messrs. T. K. Narayana Pillai, S. Prabhakaran Nair and G. V. Ramanan.

K. C. Abraham, B. A., L. T., Manappilly, Ayyampilly, (T. C. State).	Respondent.

By advocates Messrs. P. Govinda Menon, E. V. Mathew, M. V. Poulose, E. V. Abraham and K. Achutha Menon.

ORDER.

Petitioner is the defeated candidate at the last general Election to the Travancore-Cochin Legislature from the Narakkal Constituency. Respondent is the successful candidate. Petitioner has called in question the election of the respondent on the ground that the respondent's nomination was improperly accepted by the Returning Officer and that that had materially affected the result, and further that various corrupt practices had prevailed and there was no free election. He has accordingly sought a declaration that the election is wholly void, or alternatively, that the election of the respondent is void. He does not however, pray the seat.

2. In the petition as originally filed both the reliefs abovesaid had been claimed. On the petitioner being questioned by the Tribunal as to how he would be entitled to claim cumulative

reliefs in the nature of the frame of Section 84 read with Section 98 of the Representation of the People Act (hereinafter referred to as, the Act), the petitioner submitted that the relief prayed for may be taken as confined to the one falling under Section 100 (1) only viz., for a declaration that the election is wholly void. Thereupon respondent filed M. P. 2 of 1954 to the effect that petitioner having confined his claim for relief to the one falling under Section 100 (1), the averments and issues relating to the relief under Section 100 (2) had become unnecessary and therefore that they should be struck off. Petitioner then sought leave to withdraw the statement confining his claim for relief to that under Section 100 (1) and requested permission to amend the petition so as to enable him to claim either relief in the alternative. After hearing arguments the Tribunal allowed petitioner's application M. P. Nos. 4 and 5 of 1954 and dismissed M. P. No. 2 of 1954 filed by the respondent. The order of the Tribunal disposing of the above miscellaneous petitions is appended, and forms Annexure A.

3. The following issues stand settled for trial: —

I. (a) Was the acceptance of the respondent's nomination improper by reason of the fact that he was the Headmaster of the Rama Varma Union High School, Cherai, and a member of the committee of management thereof ?

(b) Has such acceptance materially affected the result of the Election ?

II. (a) Was any undue influence exerted by the persons mentioned in paragraph III (B) of the petition and in paragraph III of the list of particulars ?

III. Was the pamphlet 'Soviet Swargam' circulated or freely distributed in the Constituency as stated in paragraph 3 (B) of the petition and in Paragraph IV of the list of particulars ? If so did it amount to exercise of undue influence? Did any of the persons mentioned in paragraph IV of the list exert undue influence as stated ?

IV. (a) Was any statement published by Narayanan Asan in relation to the petitioner's character, as attributed to him in paragraph 3 (C) of the petition and in paragraph V of the list ? If so was it false and such as the maker believed to be false or did not believe to be true ? Was the publication of the statement reasonably calculated to prejudice the prospects of the petitioner at the Election ?

(b) Was the statement made with the connivance of the respondent ?

V. (a) Was Brother Vadakkan one of the propagandists of the respondent at the Election? Was

any statement made by him at any of the meetings held at Nayarambalam on 31-1-1954 and at Mattancherry on 13-2-1954 containing aspersions on the personal character of the petitioner? If so was the statement of fact that was made false and such as the maker believed to be false or did not believe to be true?

(b) Were any slogans of the kind mentioned in paragraph 3 (C) of the petition and in paragraph VI of the list repeated by the jatha taken out by Brother Vadakkan in connection with the Nayarambalam meeting above-said? If so, were the slogans and the statements abovesaid reasonably calculated to prejudice the prospects of the petitioner's election? Were the statements and slogans made and repeated with the connivance of the respondent?

VI. (a) Is there anything in the article in the Deenabandhu of 31st January 1954 referred to in paragraph 3 (C) of the petition and in paragraph VII of the list that reflects on the personal character of the petitioner? Were the statements of fact attributed to the petitioner in the article false and were they published in the belief they were false or that they were not true? Was the publication reasonably calculated to prejudice the prospects of the petitioner at the Election?

(b) Was the publication made with the connivance of the respondent?

VII. Has the result of the election been materially affected by reason of the corrupt practices alleged? Did the respondent take all necessary precautions for the preventing of the commission of such corrupt practices? Is the election of the respondent liable to be declared void?

VIII. Has undue influence so extensively prevailed at the Election as to render it not a free election?

IX. Is the Election liable to be declared wholly void?

X. What is the proper order as to costs ?

4. *Issue No. I.* Petitioner has stated that the respondent was at the time of nomination (as before and after) a person having an interest in the performance of services undertaken by the State Government as per Entry XI in list II (State List) of 7th schedule to the Indian Constitution, and therefore that he was one disqualified under Section 7 (d) of the Act to be chosen for membership of the legislature. This contention formed the subject matter of heated argument and therefore it is necessary the point is examined in detail.

5. The circumstances under which a person shall be disqualified from being chosen as and from being, a member of the legislative assembly or the legislative council of a State, are found indicated in Clauses (a) to (e) of Article 191 of the Indian Constitution. Of these, Clause (e) is to the effect that he shall be so disqualified " if he is so disqualified by or under any law made by Parliament ". The Representation of the People Act was passed by Parliament after the Constitution came into force, and Section 7 thereof enumerates in Clauses (a) to (e) the different heads of disqualification prescribed by the Act. The disqualification alleged here is under the head specified in clause (d) which is to the following effect :—" A person shall be disqualified for being chosen as and for being a member of Parliament or the legislative assembly or the legislative council of a State if whether by himself or by any person or body of persons in trust for him or for his benefit or on his account, he has any share or interest in a contract for the supply of goods to, or for the execution of any works or the performance of any services undertaken by, the appropriate Government". As Section 7 (d) stands framed, the expression ' contract ' occurring there would govern all the cases subsequently enumerated, so that the disqualification thereunder would arise on any one or other of the three grounds specified viz.—

(i) If the candidate has any share or interest directly or indirectly in a contract for the supply of goods to the appropriate Government;

(ii) If he has likewise any share or interest in a contract for the execution of any works undertaken by the appropriate Government;

(iii) If he has likewise any share or interest in a contract for the performance of any services undertaken by the appropriate Government.

The contention of the petitioner is that the disqualification in respect of the respondent is one arising under ground No. III above, and to appreciate the position the facts relied on by the petitioner have first to be looked into.

6. It is said in this connection that the respondent is the Headmaster and Manager of the Rama Varma Union High School, Cherai, a private educational institution receiving grant-in-aid from the Government of Travancore-Cochin under the rules prescribed in the Cochin Education Code. On 1st December 1951 the Government of the State formulated a scheme (Copy—Ex. IX) for the betterment of the service conditions of teachers employed in private educational institutions. The scheme provided that in the case of institutions acceding thereto, the management concerned should deposit 80 per cent. of the fee collections in the State Treasury and pay the salary of the teaching staff out of such deposit—Government undertaking to make up any deficit that might arise. It was left entirely to the option of such private institutions to accede

or not to the scheme, but once there was an accessien, there could be no going back. The Rama Varma Ueion High School, Cherai, it is said, had acceded to the scheme and has been run conformably to its provisions ever since. Accerding to the petitiener this was the position at the time respondent's nemination was filed. The above facts are net disputed by respendent.

7. Learned ceunsel fer petitioner advanced the following contentions in the circumstances:

(i) The Rama Verma Unien High Schoel, Cherai, in so far as it is imparting education in the lecality where it is situate, is perlorming a service undertaken by the Government of Travaecore-Cechin (the 'apprepriate Government' in this ease).

(ii) That the scheme put up by Government (copy of which has been filed as Ex. IX) constituted a standieg "offer" or "prepesal" to all private educational iostitutions, detailing the terms and cenditiens under which aid will be given.

(iii) That when the Rama Varma Unien High Scheol, Cherai, acceded te this scheme there was an "acceptance" of that offer, and an "agreement" had resulted.

(iv) That the detriment suffered by the management consequent ee their depositing 80 per cent of the fee cellections inte the Government's coffers censtituted among ether factors the "eensideratien for the agreement and therefore a "contract" was fermed.

(v) Respendent was receiving his salary on the basis ef this scheme and therelore was a person having a direct interest in the eentract.

8. The above argument may appear plausible en first impression, but the pesitiee has te be carefully examined. At the eut-set, the enquiry is whether petltioner is right in saying that the scheel in question is performing a service undertaken by the Travancere-Cechin Gevernment. Admittedly it is a private educational institutien imparting education on its own respensibility at the place where it is situate, subject to the conditions prescribed by the Cochin Education Code, and the scheme promulgated in 1951. It is not suggested that educatien is a field moeopelized by Gevernment. Nor is it the petitioner's case that Government had eetrusted by assigement, delegation or etherwise any pertien ef its activities in that direction to the management ef that schoel. It is therefere incomprehensible to us how an institutien ef that kind admittedly functioning en parallel lines with Government aed carrying on activities en its ewn account, ceuld ever be regarded as oee engaged in the performance of a service undertaken by Government. The fact that the school is receivieg aid lrom Gevernment cannet any way affect the position, and in this cennection we have only te refer to the

Judgment of Venkitarama Iyer, J. in *University of Madras* vs. *Shanta Bai* (66 Law Weekly 665 at page 667). In that case His Lordship held that the University of Madras could not be considered as exercising any Governmental function, although there was provision for contribution by Government to its funds under the Statute of which the University was the creature.

The first contention advanced for the petitioner must therefore fail.

9. The point next arising is whether petitioner is right in his contentions (ii), (iii) and (iv) that there has been a *contract* between the management of the school and Government. The elements of a valid contract are an offer by one party, an acceptance of that offer by another and consideration in support. But it is an essential pre-requisite that "an offer in order that it may be binding by acceptance must be one which could reasonably be regarded as having been made in contemplation of legal consequences". (See Anson's Principles of the Law of Contract—page 48—19th Edition). As Scrutton L. J. said in (1932) 2 K. B. 288 "it is quite possible for parties to come to an agreement by accepting a proposal with the result that the agreement does not give rise to legal relations. The reason for this is that the parties do not intend that their agreement shall give rise to legal relations. This intention may be implied from the subject matter of the agreement, but it may also be expressed by the parties". What is the position in this case? On the 1st of December 1951 the Government of the State adumbrated Ex. IX scheme known as "Scheme for the Improvement of Service Conditions of Teachers of Secondary Schools under Private Management". In paragraph 3 thereof it is stated that "It is found necessary that the teachers should be guaranteed security of service and service conditions befitting their position, and for this purpose *the present provisions in the Education Code have to be enforced and the rules have to be amplified.* The rules in the amplified form are annexed to these proceedings as Appendix 1." (Italics ours). The scale at which the headmaster and the teaching staff are to be paid their salary and dearness allowance is next indicated and to make provision therefor and guarantee such payment, a method is prescribed. It is enjoined that the management should deposit in this behalf 80 per cent. of the fee collections into the Public Account in a Government Treasury "to *be opened for the purpose in the name of the management*" (italics ours). The salaries of teachers is constituted a first charge on this public account to be paid at the rates fixed in the scheme, any surplus remaining after meeting the expenditure under salaries being permitted to be utilised for other school purposes. It is then stated that "should this amount of 80 per cent. of the fee income be found insufficient for payment of salary to teachers, the deficit will be met by the Department. Withdrawal will be effected by the managers from the Public Account by withdrawal forms counter-signed by the Inspecting Officers". The accounts are required to be audited by

the Education Department, and provision is made for contribution to Teachers' Provident Fund which will be compulsory. Next follows the statement that the provisions of this scheme would be applicable only to schools acceding thereto and that a management acceding to the scheme will not be allowed to secede. Rules relating to service conditions of teachers and for making remittances and disbursements under the scheme are then appended.

10. We have adverted to the provisions of Ex. IX at some length to show that there is not a whisper anywhere in the scheme to suggest that the rules for grant-in-aid under the Cochin Education Code have in any manner been departed from. The character of the aid remains in-tact as defined in the Cochin Education Code; what has been done in effect is but to devise safeguards to ensure that the aid given by Government is not mis-spent or dissipated or retained by the management in any manner, at their pleasure. Chapter IX of the Cochin Education Code which continues to be applicable under the scheme makes clear in Sections 76 and 77 the character of the aid. Rule 76 is to the following effect:—"The rules in this chapter are a mere definition of the circumstances under which aid may be given to schools. *Grants are a matter of grace and cannot be claimed as a matter of right*; and all the rules contained in this chapter must be read as subject to the absolute right of the State to grant or reject any application at discretion. Rule 77 runs as follows:—Government reserve to themselves, anything in the rules of this Code notwithstanding, the right to refuse or to withdraw any grant or any portion of it *at their entire discretion*" (italics ours). The clear effect of these provisions is to indicate in language that cannot be mistaken that grants-in-aid are absolutely ex-gratia payments and that they would under no circumstances constitute the basis of any legal obligation. In these circumstances we fail to see how it could be set up that the offer or proposal adumbrated in Ex. IX was one "in contemplation of legal consequences"; in other words, how that could form the foundation for a valid contract.

11. But the counsel argued that 'contract' in Section 7 (d) need not be an enforceable one. In this regard he relied on the decision of the Supreme Court in Vithaldas Jasani *v.* Parashram (reported in 1954 Supreme Court Law Journal at page 315) where Their Lordships have observed as follows:—"Section 7 (d) of the Representation of the People Act does not require that the contract at which it strikes should be enforceable against the Government; all it requires is that the contract should be for the supply of goods to the Government". (See page 325). On the strength of the above observation, counsel contended for the view that "contract" referred to in Section 7 (d) need not have the necessary requirements under law for its formation *viz.*, a valid offer, acceptance and consideration, and that the expression as used in the Act has to be understood and construed in a broad and liberal sense. We have read the judgment.

of the Supreme Court with care, and see no warrant in it whatever for this extreme position. To appreciate the exact implications of the above statement of Their Lordships it is necessary to advert to the circumstances under which the statement of law happened to be made.

12. The circumstances were shortly these. One Jasani whose election was called in question in that case, was a partner in the firm of Moolji Sicka, o company engaged in the manufacture of beedies. The Central Government was interested in stocking and purchasing beedies for sale to its troops through its canteens, and it placed two brands of beedies manufactured by the firm on the approved list. An arrangement was then entered into between the Government and the firm under which the firm was to sell and the Government was to buy from the firm from time to time the said brands of beedies. It was argued before Their Lordships that the above arrangement amounted to "a contract for the supply of goods" in terms of Section 7 (d) of the representation of the People Act and the contract was said to be embodied in four letters that passed between the parties. Their Lordships held that no binding engagement could be spelt out of the letters in question and that they merely set out the terms on which the parties were ready to do business if and when orders were placed and executed, and they added that as soon as an order was placed and accepted, a contract arose. It was then submitted that the last day for putting in nominations in that case was 15-11-1951 and that the firm had supplied all the goods previously to that date and therefore that the contract had been executed, and only payment for the supplies effected remained outstanding. In that view it was urged that there was no subsisting contract at any time during the relevant period and that the relationship between the parties as it then subsisted was only that of debtor and creditor. Their Lordships repelled the contention saying that the contract for the supply of goods continued in being till payment was effected and it was fully discharged by performance on both sides, and therefore they held that there was a subsisting contract in which Jasani had both a share and an interest at all material times to attract the disqualification under Section 7 (d) of the Act.

13. The point was then raised that the contracts in that case were not expressed to be made by the President as required under Article 299 (1) of the Constitution and therefore that they were void. Their Lordships in disposing of that argument stated (at page 325 of the report) as follows:—"In the case in question the Chairman of the Board of Administration acted on behalf of the Union Government. The only flaw is that the contracts were not in proper form and so because of this purely technical defect, the principal could not have been sued. But that is just the kind of case that Section 230 (3) of the Indian Contract Act is designed to meet. It would, in our opinion, be disastrous to hold that the hundreds of Government officers who have daily to enter into a variety of contracts, often of a petty nature, and

sometimes in an emergency, cannot contract orally or through correspondence, and that every petty contract must be effected by a ponderous legal document couched in a particular form. It may be that Government will not be bound by the contract in that case, but that is a very different thing from saying that the contracts as such are void and have no effect. It only means that the principal cannot be sued but we take it there would be nothing to prevent ratification, especially if that was for the benefit of Government".

14. The observations relied on by counsel and referred to in paragraph 11 herein, have to be understood in the above setting. So considered, it does not appear to us that Their Lordships intended there to suggest that "contract" contemplated in Section 7 (d) need not be a valid one with the necessary elements required by law for its formation.

15. One other decision was relied on in this connection and that is reported in 4 Election Law Reports at page 101. In that case the Cuttack Election Tribunal expressed the view that the word 'contract' in Section 7 (d) is used 'in a comprehensive and popular sense" and said that, in construing that section they did not feel fettered by the technical rules of law in the Indian Contract Act regarding the formation of contracts. In so expressing themselves the Tribunal (it appears to us) was largely influenced by what they thought was the anomoly that might result if a person qualified on the date of nomination by reason of there not being a completed contract at the time became subsequently disqualified by the contract being completed after nomination. It is said that "If such persons are elected by reason of the absence of a completed contract they would incur disqualification each time the agreement ripens into a contract by acceptance of the standing offer by the Government. No one can doubt that such a result will seriously jeopardise the independence of the members of the legislature, the preservation of which is the sole object of the provisions of Section 7. A member of the legislature who has entered into such an agreement will be at the mercy of the Government which could, by mere acceptance of the standing offer, make a contract that will unseat him or by refraining from doing so, ensure his subservience. Such a result could not have been contemplated by the legislature". We are afraid the Tribunal was under the impression that the crucial date for the disqualification to be attracted was the date of nomination and no other, for otherwise, we cannot see how any such situation as contemplated by the Tribunal can arise. In the Supreme Court Journal case that we have adverted to (1954 S. C. J. 315), Their Lordships have at page 317 clarified the position thus :—

> "Now the words of the Section are "shall be disqualified *for being chosen*". The choice is made by a series of steps starting with the nomination and ending with the announcement of the election. It follows that if a disqualification attaches to a candidate *at any one of these stages* he cannot be chosen". (Italics ours).

The above statement of the law by the Supreme Court is sufficient answer that the consideration that weighed with the Cuttack Tribunal to justify the view that they have taken, cannot properly arise.

16. We must now advert to the decisions of certain other Election Tribunals pressed upon us by learned counsel for the petitioner in support of his arguments generally on Issue No. 1. They are the cases reported in 2 E. L. R. 167; 3 E. L. R. 81; 5 E. L. R. 386; 5 E. L. R. 417; 5 E L. R. 446; 7 E. L. R. 171.

17. In 2 E. L. R. 167 the facts were that the Madras Government had entered into a regular contractual agreement on stamp paper with the candidate in question whereby he was appointed State nominee for the distribution of yarn in the North Arcot District. In entering into that contract the Madras Government were acting under authority delegated to them by the Central Government under Sections 3 and 5 of the Central Act XXIV of 1946 which enabled the Central Government to take upon itself the power to pass orders for regulating and prohibiting the production, supply and distribution and transport of essential articles and trade and commerce for the avowed object of maintaining or securing the supplies of essential articles or for arranging for their equitable distribution and availability at a fair price. The Tribunal found that the candidate concerned was, at all relevant times, interested in a contract for the performance of services undertaken by the Madras Government and he was therefore disqualified from being chosen under Section 7 (d) of the Act and therefore the acceptance of his nomination was improper.

In 3 E. L. R. 81 the candidate concerned was held as not disqualified for the reason the Government in question was not "the appropriate Government".

In 5 E. L. R. 386 the facts were these:—In pursuance of a scheme for the distribution of food grains at fair prices introduced by the East Punjab Paddy and Rice (Milt Control and Procurement) Order, 1948, the Governor of the Punjab entered into an agreement with an association called the "New Rice Association", by which the association agreed to distribute all rice manufactured by it, in the manner laid down, and at the prices fixed, by the Government. The petitioner, who was a partner of a firm which was a member of this association, stood as a candidate for election to the Punjab State Assembly, but his nomination was rejected by the Returning Officer on the ground that he was interested in a contract for the performance of services undertaken by the State Government. It was found that the Punjab Government had taken upon itself an essential service for the equitable distribution and availability at fair price of food grains and other commodities, and that there was a contract entered into for the performance of that service, and as the petitioner was a member of the association which was party to that contract, he was interested in the contract and therefore disqualified.

5 E. R. 417 is a decision of the Tanjore Election Tribunal. In that case the members of a joint Hindu family, of which the respondent was the manager, formed themselves into a firm in 1950, to carry on the family business, and in 1951, the firm entered into four kinds of contracts with the Governor of Madras, *viz.* (i) a stock-holder's agreement by which the firm undertook to hold the reserve stock of the Government, store them safely and to dispose of them as directed by the Government, (ii) to store and sell imported foodgrains and food-products which were allotted to the firm by the Government, (iii) a quota-holder's agreement by which the firm agreed to pay the Government the difference between the landed costs and market price of paddy and rice allotted to the firm, and (iv) a wholesale procuring agency agreement under the Madras Foodgrains (Intensive Procurement) Order 1951. The respondent, intending to stand as a candidate for election, executed a deed on the 15th November, 1951, by which he relinquished his interest in the firm to the other partners, and gave notice of his retirement to the Registrar of Firms and in the newspapers, and his retirement was accepted by the Collector on 1st October, 1952, "with effect from 15th November, 1951." The accounts between the respondent and his firm, and the accounts between the firm and the Government were not however settled until the 15th March, 1952. The nomination paper of the respondent was filed on the 20th November, 1951. It was held that the contracts in question were contracts for the performance of services undertaken by the Government under the scheme for equitable distribution of foodgrains contemplated by the Essential Supplies (Temporary Powers) Act, 1946, and that the relinquishment deed was not, on the facts of the case, a real one; at any rate it was not effective as the accounts between the partners and the share of the respondent in the assets and liabilities of the firm had not been settled, and that the respondent was therefore interested in contracts for the performance of services undertaken by the appropriate Government within the meaning of Section 7 (d) on the date of his nomination and therefore disqualified to stand as a candidate.

In 5 E. L. R. 446 respondent No. 1, whose candidature was impugned was President of an association of merchants of which a firm where respondent No. 1 was a partner, was one of the members. The Association obtained a license from the Controller of food grains of the U. P. Government under the Food Grains Procurement and Levy Scheme, whereby they undertook to buy, store and deliver to the State Government Controlled food grains of prescribed specification and to deliver such food grains only to such person or persons at such prices as may be fixed by the State Government. It was held by the majority (one member holding *contra*) that the State Government had undertaken an essential service and that the association had entered into a contract for the performance of that service and that respondent No. 1 being interested in the contract was disqualified.

The last case cited was 7 E. L. R. 171. The respondent in that case had been appointed commission agent for supply of seeds to persons who had permits to buy them in pursuance of a scheme of the Government to supply improved seeds and seedlings to cultivators. The appointment was made under an agreement between the respondent and the Governor of Punjab. It was found that there was mutuality of obligations under the agreement and that it was supported by consideration and so there was a contract entered into by the respondent for the performance of a service to the community undertaken by Government. The nomination was therefore held to be improper.

18. We are at a loss to see how these decisions help the petitioner any way. Each one of the cases where the disqualification was found, furnished an instance where Government in exercise of statutory powers or otherwise assumed control of or decided to perform, certain services, and contracts perfectly valid in law had been entered into for the performance of those services, and the candidate concerned was found to have some interest in that contract. We do not find here the Rama Verma Union High School, Cherai, performing any service undertaken by Government, nor are we able to hold that the accession by the management of that school to the scheme adumbrated in Exhibit IX resulted in any contract, valid in law. In the circumstances, the fact that respondent was interested in that scheme, is of no account. We are therefore clear that petitioner's contention that respondent's nomination was improperly accepted is without substance and accordingly our finding on the first part of issue No. 1 is in the negative.

19. *Issue No. I (b)* : There can be no question that if acceptance of nomination is improper and the nomination happens to be that of the successful candidate, the result is materially affected. (See Vashist Narain Sharma v. Dev Chandra (1954 S. C. J. 717 at 721). But as we have found against the petitioner on Issue No. I (a), Issue No. I (b) does not arise.

20. *Issues Nos. II and III* : Petitioner has next alleged that the corrupt practice of undue influence extensively prevailed in the constituency and in the result there was no free election. Before going into the facts bearing on this allegation, what constitutes undue influence under the Act may first be noticed.

"Undue influence" is defined in Section 123 (2) as "any direct or indirect interference or attempt to interfere on the part of a candidate or his agent or any other person with the connivance of the candidate or his agent, with the free exercise of any electoral right: The proviso is added that (a) without prejudice to the generality of the provisions of this clause, any such person as is referred to therein who:—

(i) threatens any candidate, or any elector, or any person in whom a candidate or an elector is interested with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community or;

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested will become or will be rendered an object of divine displeasure or spiritual censure

shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause, (b) a declaration of public policy, or a promise of public action, or the mere exercise of legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause".

Under Section 124 (1) "any act specified in clauses (1) to (8) of Section 123 when done by a person who is not a candidate or his agent or a person acting with connivances of a candidate or his agent "shall also be deemed to be a corrupt practice for the purpose of the Act."

21. The complaint of the petitioner is rested on certain facts that are found detailed in paragraph 3 (A) of the petition and in Paragraphs I to IV of the list of particulars. Shortly stated, his case is this:—The petitioner fought the election as the candidate set up by the United Front of Leftists (composed of the Kerala Socialist Party, Revolutionary Socialist Party and the Communist Party,) with which the Praja Socialist Party had entered into an electoral alliance at the time. The opposing party was the Congress whose candidate was respondent. It is stated that ecclesiastical authorities carried on propaganda in the constituency against the petitioner exhorting Roman Catholics (who formed over 35 per cent. of the voters) not to vote for him on threat of divine displeasure and spiritual censure. On 24-1-1954 the Archbishop of Verapoly issued a circular (of which Exhibits A and A (i) filed with the petition are said to be copies) which denounced the petitioner's party as 'immoral' and 'accursed' following principles which were 'unholy' and cut at the very roots of the Catholic Church and all that it stood for. In accordance with the directive in the circular, it was read and explained to the congregation on 31-1-1954 in the Churches indicated in the List by the Parish Priests named, and sermons were preached on 7th and 14th February 1954 that non-conformity with the mandates of the circular will entail divine displeasure and spiritual censure. The circular was printed and circulated in large numbers throughout the constituency, and along with it, a pamphlet styled 'Soviet Swargam' (Copy Exhibit B) published with the Imprimatur of the Vicar General of Verapoly Diocese, was also largely circulated among Catholic voters. The pamphlet prominently displayed a threat that Catholics who supported the petitioner's party will be excommunicated under what is called 'Maharon'.

22. We will first consider whether a circular (of which Exhibits A and A (i) are said to be copies) was issued by the Archbishop and read and explained on 31-1-1954 in the churches mentioned by the petitioner and by the priests named in his list

of particulars. The Archbishop himself has not been examined. He was cited as a witness by the petitioner and summons was issued, and he was also required to produce the original of the circular. The Archbishop put into court the Archdiocesan Gazette, and filed a statement saying that the original was destroyed and that the Gazette contained a true copy. In answer to the summons, he represented that he was a person exempted from appearance in court under a notification issued by the Travancore-Cochin Government and applied that he may be examined on commission. The petitioner stoutly opposed the application contending that Section 133 C. P. C. on the basis of which the notification was issued, offended the principle of equality before the law guaranteed under Article 14 of the Constitution, and that it was therefore invalid under Article 13. The matter was argued at length and the Tribunal had also the advantage of hearing counsel for the Advocate-General who was asked to appear. The Tribunal took the view that it had no jurisdiction to pronounce on the constitutionality of a statutory provision, and petitioner's objection was therefore dismissed, and a commission was directed to issue for the Archbishop's examination. (The order of the Tribunal is Annexure B.). When the commissioner appointed notified the parties, the petitioner wrote down that he did not want the Archbishop to be examined under the circumstances, and filed a statement canvassing the propriety of the order of the Tribunal dismissing his objection to the Commission application. On 7-1-1955 he put in writing on the back of his witness list that the witnesses not so far examined by him need not be examined on his side. Among the witnesses so given up was the Archbishop.

23. The Vicar-General of the diocese has been called, and he has given evidence as Pw. 13 that Exhibit A (i) appeared in the Archdiocesan Gazette. That is also the evidence of Pw. 11, the editor thereof. Of the priests mentioned by the petitioner (who have been examined) Pw. 11 and 25 testify to receiving a circular like Exhibit A (i) and reading it to the congregation, while Pws. 2, 5, 7 and 8 swear to receiving one like Exhibit A and reading it out. Pw. 26 would say that he received a circular and read it before those assembled in his church but could not identify it at the moment. Thus the priests who give evidence on the point do not all speak in the same voice; all the same it may not be wrong to conclude that a circular of the type of Exhibit A or Exhibit A (i) was in fact issued by the Archbishop and the same was received and read to the congregation on 31-1-1954 by the clergy men concerned, in the various churches under his jurisdiction.

24. Exhibits A and A (i) may now be examined. They are both framed in Malayalam. But for some minor variations in title, and the presence of a photo-print of the Archbishop in one, they are similar in contents. There is however a directive to be found in Exhibit A that the circular should be read out and explained, and that directive is missing in Exhibit A (i). The

petitioner has prepared and given an account in paragraph I of the list of particulars of what, according to him, the circular purports to say, and we think it will be helpful to extract the passage :—

"The circular conveys the spiritual blessings of the Archbishop in the name of God and the Holy See to all Parish Priests, other Priests, Brothers, Sisters and all believers in Christianity within his jurisdiction. It goes on to state that the right of vote is tied up with certain spiritual duties, failure to discharge which will be harmful to the interests of the individual and the country. The Archbishop states that ecclesiastical authorities are reminding Catholics of these duties in order to prevent them from committing the *grave sin*. He further states that when ecclesiastical authorities remind Catholic voters of the principles and commandments they are only exhorted about their spiritual duties. He also stated that the Church does not recognise Marxist Parties like K. S. P., R. S. P., Communist Party etc., as political parties. They stand to destroy the principles and ideals of the church based on spiritualism and want to establish in its place a merely Secular State. He contends that the opposition of the church towards Marxist Parties is not due to political reasons but merely due to spiritual and moral reasons. This enables the Catholic Priests to insist on the Catholics not to give their votes to Marxist Parties and it is therefore clear according to him that no Catholic should vote for K. S. P. and other Marxist Parties. In the last para of the circular he directs all parish priests to read it on the ensuing Sunday i. e. 31-1-1954 in all the Churches at the time of the Holy Mass and exhort people of their duties".

25. It may be stated here that petitioner has given a fairly correct account of what the circular in effect says—only we see nothing in Exhibit A or Exhibit A (i) to warrant the petitioner using the words 'grave sin' (italicised by us in the third sentence of the passage above extracted). The Malayalam expression found in the circular is "Maha-aparadham" for which 'grave error' would (in our view) be a more accurate translation, but whether that is so or not, we do not think it can be disputed that "Maha-aparadham" is not so strong or suggestive an expression as "Mahapapam" which is what the words "grave sin" would properly connote.

26. We shall now proceed to examine how the law stands.

That freedom of election is the corner stone of representative institutions is a truism that cannot be gainsaid; and the source of much of the electoral law in this country is "the ancient patrimony of democratic ideas that is the heritage of Britain". In framing the Representation of the People Act, our

Legislators have largely drawn on the corresponding statutes and the common law obtaining in England; and though the Act does not run exactly parallel with English law in all respects; we think we are on firm ground in saying, that on the subject of how far clerical influence is permissible, the pronouncements of Learned Judges embodied in O'Malley and Hardcastle's Reports furnish sure and helpful guidance.

27. Those pronouncements have been summarised by Parker in his standard work 'Election Agent and Returning Officer' (1950 Edition) at Page 305; and we can do no better than extract the following passage from that book:

> "All clerical or spiritual influence is not, however, undue. In the proper exercise of their legitimate influence, priests and clergy may lecture the people, and address their congregations upon the conflicting claims of the different candidates, even in their chapels (Galway, 1 ib. 307); ....for a priest is a citizen and entitled to have his political opinions, and to exercise his legitimate influence legitimately (Tipperary lb. 31) So also if priests believe that a spirit of antagonism to their church, religion or clergy has arisen, and recognise in a particular political party elements of danger to religion they may use their influence to assert and maintain due respect to religion, and may express their opinion, in suitable language, that issues of great importance to religion are involved in a pending political contest (See South Meath, O'. M. & H. 134). But a priest must not pass the bounds of legitimate influence (Galway, 1 O'M. & H. 307); he must exercise his just influence without denunciation, and he has no privilege to violate or abuse the law, or to interfere with the rights and privileges of other subjects (Tipperary, 2 lb. 31);".

28. Perhaps the locus classicus of the law on the subject is to be found in the judgment of Fitzgerald J. in Longford (2 O'. M. & H. 6 at 16) "The Catholic priest has, and he ought to have, great influence. His position, his sacred character, etc., ensure it to him. In the proper exercise of that influence on electors the priest may counsel, advise, recommend, entreat, and point out the true line of moral duty, and explain why one candidate should be preferred to another, and may, if he thinks fit, throw the whole weight of his character in the scale, but he may not appeal to the fears, or terrors or superstition of those he addresses. He must not hold out hopes of reward here or hereafter, and he must not use threats of temporal injury, or of disadvantage, or of punishment hereafter. He must not threaten to excommunicate or with-hold the sacraments".

29. It will be clear from these pronouncements and Sections 123 (2) and 124 (1) of the Act that we have earlier extracted, that the law does not strike at the existence of influence or its

due exercise over others. "Such influence is implicit in human personality and the advantages that wealth, education or a way of life may confer on an individual. It is only with the abuse of such influence that the law is concerned and it cannot be said that there has been an abuse simply because influence has been proved and its operation established."

We have examined Exhibits A and A (i) in the light of the principles above-said, and have no doubt in our minds that the circular in question does not in any way spell in the region of 'undue influence'.

30. The distribution of copies of the circular which petitioner alleges, cannot therefore affect the position even if made out. The evidence regarding such distribution is also hardly satisfactory. Apart from petitioner, Pws. 14, 15, 19, 20, 23, 39 and 55 speak regarding this. Of these witnesses Pws. 14 and 15 are petitioner's henchmen; Pw. 19 was signatory to a notification convening a meeting of the workers belonging to the United Front of Leftists (hereinafter referred to as U. F. L.) in connection with the petitioner's election; Pw. 20 was another worker for the petitioner; Pw. 23 was the Secretary of the U. F. L Election Committee and Pw. 39 another U. F. L. worker. Pw. 55 is not a voter in the constituency.

31. Petitioner has next proceeded to assert that apart from the reading and distribution of the circular, the parish priests he has mentioned went the extent of delivering sermons from the pulpit, in the course of which they warned the congregation that disobedience to the mandates of the circular would entail divine displeasure and spiritual censure, and that any Catholic voting for the petitioner will be excommunicated. According to the petitioner such sermons were preached on 31-1-1954, and on 7-2-1954 and 14-2-1954.

32. There can be no question that if petitioner's complaint is true in this regard, the law has been grossly infringed. But what is the evidence ?

33. Petitioner confesses that he himself has no direct knowledge of any such sermons. He was present at the Karthedam church when Pw. 25 (one of the priests he has mentioned in this connection) addressed, and he does not say that Pw. 25 made any such statement. The other clergy-men listed by him are respectively Pws. 2, 3, 4, 5, 26, 6, 12, 7 and 8. The last of the series in the list (Rev. Fr. Nerona) was one of the witnesses whose examination he gave up on 7-1-1955.

34. Pw. 48 has been examined to say that Pw. 3 warned the congregation that assembled at the Chakkarakadavu church that voting for the U. F. L. will entail censure by the church and witness understood that to mean excommunication, or like punishment. This man is the Secretary of a Co-operative Society, the President of which is one whose relations with the respondent are admittedly unfriendly. There is, however,

R. W. 2 (who has no reason for bias) swearing that no such thing was said by Pw. 3. Pw. 20 attributes to Pw. 7. that the latter said that voting for U. F. L. is sinful and would result in excommunication. R. W. 6 who was present denies this. Pw. 50 testified that Pw. 8 pointed out that voting for the U. F. L. will be sinful and sacraments will be refused, but R. W. 4 has sworn contra. Pws. 14, 15, 17, 19 and 24 are others relied on as speaking to a sermon by Pw. 12 on the lines suggested by the petitioner. Of these Pws. 14, 15 and 19 are found to be interested witnesses and Pw. 24 also appeared as a person in the same category. Pw. 17 did not support. As against this oral testimony relied on by the petitioner, R. Ws. 5 and 14 are pointed to by the respondent, and they deny that any such thing was said by Pw. 12. Both R. Ws. 5 and 14 are independent witnesses, and R. W. 14 is besides, a law graduate.

35. One striking fact we noticed at the examination was that not one of the clergy-men to whom such sermons were attributed, was asked a single question by the petitioner's counsel as to whether any threat of the kind stated was delivered while preaching from the alter. Petitioner was bound to do this by all standards, and provide an opportunity to the priests concerned to answer the charge levelled against them. Significantly enough that was not done.

In the circumstances above-said, we cannot accept petitioner's evidence. Our conclusion is that petitioner's complaint in this regard has not been made out.

36. We will now take up the last charge under this head. That relates to a pamphlet styled 'Soviet Swargam' said to be prepared by one Rev. Fr. Archangel O. C. D. with the imprimatur of Vicar-General of Verapoly and printed at the Mar Louis Memorial Press, Ernakulam. According to the petitioner, copies of this pamphlet were 'largely' and 'freely' circulated among the Catholic voters of the constituency and the distribution is said to have been done from the Ochantburuthu and Nayarambalam Congress Election Offices. Petitioner's case is that the pamphlet displayed a threat that any Catholic supporting the U. F. L. and associated parties, will suffer excommunication under Maharon as declared by the Holy See in 1949.

37. A copy of the pamphlet has been filed along with the petition and that has been marked as Ex. B at the trial. It is in Malayalam and bears the imprimatur of the Vicar-General. In the concluding paragraphs of that pamphlet (at page 28) the threat referred to by the petitioner is found, and it has been displayed again prominently on the wrapper behind. That is marked as Ex. B (i). There can be no question therefore, that if this pamphlet was published and copies thereof were extensively circulated among the voters at the relevant time in this case, that would constitute 'undue influence' such as would entitle the petitioner to have the election avoided in its entirety, and also bring the parties responsible within the trammels of the law.

38. We will now examine the material placed before us in proof of the allegation. The best evidence would of course have been the production (along with the petition) of at least a few if not a sizeable number, of the copies that were distributed at the time, which should not have been difficult, if indeed, the case of 'large' and 'free' distribution was true. But not one, has been produced. Petitioner says 'I did not make any attempt to get at any of the copies of Ex. B that were actually distributed before the election before I filed this petition'. That is absolutely un-understandable from a trained political campaigner like the petitioner who had also assisted in the conduct of a previous election case in which his "co-worker" and "colleague" (Pw. 53) was concerned, and where allegations of undue influence from the church were likewise made, and the identical pamphlet (Ex. B) constituted the butt-end of the attack. So that, it was not as if petitioner would not have realised the importance and necessity of providing himself with as many copies of the pamphlet as could be got at (if they were distributed) and filing them, when he launched this election petition. Ex. B that has been filed is admittedly not a pamphlet distributed at the time of his election; it was one petitioner got 'two years back or even earlier'. That must be somewhere about 1952; and the election in this case was on 15-2-1954. Petitioner has gone on to state that he has with his copy of the pamphlet distributed at about the time of his election; but the explanation he has furnished for its non-production is hardly convincing and will deceive no one.

39. A number of witnesses have been examined in this connection, but neither Fr. Archangel nor the manager of the Mar Louis Memorial Press is there. The witnesses relied one are Pws. 14, 15, 20, 23, 24, 33, 34, 39, 50, and 55. Of these Pw. 23 is the Secretory of the Central Election Committee of the U. F. L. that put up petitioner as their candidate. The witness says that he saw several people going about with copies of Ex. B and that one copy was delivered to him at the Election Office by one Joseph, and that, witness read it through. If that was so, it is incredible a person in Pw. 23's situation (President of the Panchayat Board) would not have realised the implications of the document and informed and furnished petitioner with that copy, so that, that atleast could have been filed by him in the case. It is needless to say we cannot attach any value to such testimony.

40. Our attention was however invited by Learned Counsel to Exs. M. N. and Q. (copies of Soviet Swargam similar to Ex. B) produced respectively of Pws. 34, 39 and 50. It should be noticed here that when these witnesses were cited in the witness list nothing was mentioned about their being called to produce any document. Strong objection was taken therefore to the petitioner surprising the respondent and the Tribunal alike by bringing in these pamphlets at such a late stage. There can be

no question the objection was properly laid; the late production of these documents should in the particular circumstances heavily inweigh against their evidentiary value.

41. Pw. 39 who proves Ex. N is admittedly a relation of the petitioner who had also actively interested himself in his behalf in the electioneering campaign. He was found attending the trial at a time when he had no ostensible business to be present. According to him two of the leaders of the Anti Communist Front visited him at his house a couple of days before the election and handed him Ex. N which the witness produced. He proceeded to say that they distributed similar copies at the neighbouring houses also. The neighbours could then have been cited in preference to this witness and the fact of distribution established through independent quarters. That has not been done.

42. Pw. 34 produced Ex. M as a copy he had received three or four months prior to the election from the Ochanthuruthu Congress Office. He says he read it and kept the pamphlet in his drawer and that he mentioned about this when the petitioner saw him and solicited his vote. It is inconceivable in that case, that the petitioner would not have called for the document and referred to the fact at the earliest opportunity—at least when he put in the witness list on 30-8-1954.

43. P. W. 50 would say that while returning from Church on a Sunday (presumably 31-1-1954) he got a copy like Exhibit B from the Ochanthuruthu Congress Office. Similar pamphlets were being distributed there. The copy that he obtained was produced and proved as Exhibit Q. This man is a member of the Port Workers' Union of which petitioner is the President. Independent evidence was here again available, for the witness has mentioned that one Maplasorri Joseph and another person (Varughese) were present when Exhibit Q was put into his hands. Those persons are not here.

We are not inclined in the circumstances to place any reliance on Exhibits M, N & Q.

44. Pws. 14, 15, 20 and 24 are persons who were engaged in pushing petitioner's candidature and therefore are highly interested. Pw. 33 is a hire-ling at anybody's service. Pw. 55 is not a voter.

45. Exhibit XII has been marked on the respondent's side. It is seen to be a second edition of Soviet Swargam—published in 1952. The foreword says that the first edition was sold out within two weeks of its publication. Exhibit B is found to be one published in 1951. That publication could certainly not have been in connection with the election we are concerned with which took place in 1954. It is also highly improbable that any copy was available for circulation at the time—judging by what is stated in the Foreword in Exhibit XII.

The above resume of the evidence satisfies us that petitioner's case that copies of Soviet Swargam was 'largely' and 'freely' circulated in the] constituency is entirely without foundation.

46. We will now sum up our conclusions on Issues Nos. II and III.

(a) It is impossible to hold that any undue influence was exerted by the persons mentioned in paragraph 3 (B) of the petition and paragraph III of the list of particulars. (Issue No. II).

(b) There is no reliable evidence that the pamphlet "Soviet Swargam" was circulated or freely distributed in the constituency as stated in paragraph 3 (B) of the Petition and in paragraph IV of the list of particulars. In that view the second part of issue No. III does not arise. It has not been proved that any of the persons mentioned by petitioner in paragraph IV of list of particulars exerted undue influence as stated. (Issue III).

Issues Nos. II and III are found accordingly—against the petitioner.

47. *Issue No. IV (a & b)*: It is next stated by petitioner that at the propaganda meetings organized by the Village Election Committee of the Congress Party, one of the prominent speakers was Narayanan Asan (examined as Pw. 28). This Narayanan Asan is mentioned as having said at the meetings held at Nedungad and Nayarambalam that petitioner had removed the idol of the crucifix from the Chakkarakadavu Church on a Good Friday some years back, and that for this sacreligious act he was punished by the Archbishop of Ernakulam. According to the petitioner that was a false statement made by Pw. 28 with knowledge of its falsity and without the maker believing it to be true and the publication of such a statement was calculated to prejudice his chances at the election and therefore it constituted a major corrupt practice under Section 123 (5).

48. The question is whether such a statement was made by Pw. 28 at the meetings in the two places referred to. Pw. 28 admitted having spoken at the meeting at Nedungad on 8-2-1954, but denied addressing any meeting at Nayarambalam or ever having uttered anything of the kind attributed to him. Though petitioner has spoken on the matter, any evidence aliunde that he has provided, is only with reference to the Nedungad meeting. Petitioner admits that he has no direct knowledge about Pw. 28 making the impugned statement. He had seen no reports; and nobody took any notes of what Pw. 28 said. According to petitioner he came to know of the speech for the first time when, a couple of days later, he was questioned on the matter at a public meeting by a person from among the audience. The question was contained in a slip that was passed

on to him by the questioner. That slip has not been produced in this case nor the questioner examined, although he has been identified by Pw. 23 (who had presided at that meeting) as one Kochuvarkey and the man was included by the petitioner in his witness list. We had already occasion while dealing with issues Nos. II and III to refer to Pw. 23 as a leading propagandist of the petitioner. Pw. 36 was examined as a person who had attended the Nedungad meeting and heard Pw. 28 making the aspersions referred to. According to Pw. 36 that meeting was held on the day after Pandit Nehru's address at Pallathankulangara. There is evidence and it is common ground that Panditji's meeting was on the 5th of February 1954. Therefore if witness was speaking true, Pw. 28 had made the aspersions at a meeting held at Nedungad on the 6th of February. But Exhibit B does not show that there was any meeting arranged at Nedungad on the 6th of February 1954 for Narayanan Asan to address. Obviously therefore, Pw. 36 has been lying.

49. Petitioner put in Pw. 37 and he stated that while going about soliciting votes he found voters refusing support for the petitioner on the ground that petitioner was a person who had thrown away a crucifix from the Church. According to the witness he communicated this experience to the petitioner. Pw. 37 has mentioned that one of the persons who so refused the vote was Mariam, wife of Augustine. That lady could have been cited and examined, atleast to corroborate Pw. 37 who was admittedly a canvasser of the petitioner. That is not done and therefore we cannot believe Pw. 37 any more than Pw. 36.

50. The respondent has called R. Ws. 9 and 11. R. W. 9 denies that Asan made any such statement reflecting on the conduct of the petitioner. He was present at the Nedungad meeting. His testimony is supported by another person (R. W. 11) who attended, who does not belong to any party and appeared as one respectable and well-settled in life.

In this state of the evidence we have only to say that petitioner has totally failed to establish that Narayanan Asan made any reflections on the petitioner as stated in paragraph 3 (C) of the petition and paragraph V of the list of particulars. The first part of issue No. IV (a) found accordingly.

51. In view of that finding the remaining part of that issue and issue No. IV (b) do not arise.

52. *Issue No. V (a)*: Br. Vadakkan mentioned in issue No. V (a & b) is a student of Theology undergoing a course of study in the Apostolic Seminary at Mangalapuzha near Alwaye. Petitioner has alleged that he was one of the most prominent propagandists of the respondent. The first part of the issue No. V (a) relates to this allegation. It is said that this Br. Vadakkan organized two meetings—one on 31-1-1954 at Kuzhalkinar maidan at Nayarambalam, and the other on 13-2-1954 at Mattancherry in a neighbouring constituency—and

that in the speeches that he delivered, he animadverted on the character of the petitioner by saying that petitioner was "in the habit of blurting out nonsense and that he was usually drunk". The second part of issue No. V (a) deals with this averment.

53. The main point we are concerned with to see is whether Br. Vadakkan in fact made any reflections on the personal character of petitioner in the course of his speeches at Kuzhalkinar maidan (Nayarambalam) and at Mattancherry, as alleged. To begin with, petitioner has sworn that he himself has no direct knowledge. He did not attend the meeting, nor had he seen or heard Vadakkan speak. He had also not read the contents of the speech in any newspaper. He had sent one Kumaran (Pw. 51) to take notes of what was spoken by Br. Vadakkan at Kuzhalkinar maidan and on the following day had looked through the notes Pw. 51 had taken. Pw. 51 also has sworn to this; he states that he was deputed by the petitioner to note down what Br. Vadakkan was going to say, and the object was to do counter propaganda if necessary regarding the points taken at the meeting. According to the witness the notes were placed before the petitioner. Those notes would have furnished proper evidence, but significantly enough, they are not produced. Pw. 51 is a member of the Kerala Socialist Party of which the President is the petitioner. He is also one working for the Tata Workers' Union, the President whereof is again, the petitioner. Obviously, therefore, he is a fairly interested witness. Pws. 49, 52, 53 who are others examined in this connection, also have no direct knowledge about the speeches made by Pw. 27. Of these, Pw. 49 stated that when he went out canvassing for the petitioner he found several voters who had heard Br. Vadakkan speak telling him that the petitioner was a drunkard indulging in obscene talk. This man was petitioner's polling agent, and one who had strained his utmost for the success of the petitioner. Pw. 52 is another of the kind. He said that in the course of an election meeting convened to support the petitioner's candidature, one T. P. Krishnankutty and others queried whether there was any truth in the statement made by Br. Vadakkan that the petitioner was a habitual drunkard speaking filthy language. Pw. 53 has also referred to the question shot at that meeting and to his having satisfied the questioner that the petitioner was not a drunkard or one accustomed to foul talk. According to him, he assured the audience that the aspersions made on the petitioner's character were deliberately made for purposes of propaganda. Pw. 53 is a member of the Central Committee of the Kerala Socialist Party and Secretary of the Tata Workers' Union. He was found attending the sittings of the Tribunal on several days both at the evidence stage and during arguments—in fact he is professedly one helping the petitioner in the prosecution of this case.

54. The other witnesses examined on the point are Pws. 14, 15, 21, 22, 23, 29, 42 and 44. Of these Pws. 14, 15 and 22 were protagonists of the U. F. L. in the election campaign. Pw. 21

is the Kariastan of one Mohamed who was an enthusiastic supporter of the petitioner in the contest. These three persons swear to the petitioner's case regarding Br. Vadakkan's speech— two of them going even beyond petitioner in their version of what Br. Vadakkan said at the meeting. Pw. 44 was another who likewise, has put more into Br Vadakkan's mouth than petitioner himself. This man had addressed a meeting in the 1953 Panchayat Elections against the candidate set up by the congress party. Pw. 42 also spoke to petitioner's case feigning as a disinterested person, but it was evident his sympathies were with the petitioner.

55. The others to be referred are Pws. 23, 29 and 54 besides Br. Vadakkan himself (Pw. 27). Br. Vadakkan denied making any personal reflections on the petitioner or others in the speeches that he made at Nayarambalam and at Mattancherry. Pw. 29 said that he went to hear Br. Vadakkan's speech at Kuzhalkinar maidan as he had known that he was a reputed speaker. According to him the speaker made absolutely no reflections against the petitioner as alleged. It was pointed out that Pw. 29 was a congress man. But Pw. 23 is a U. F. L. worker and secretary of the central election committee of that party. He does not mention that Pw. 27 made any such personal aspersions.

56. Pw. 54 gave evidence that as the representative of the Kerala Kaumudi he toured the constituency to assess the chances of the respective candidates in the election contest. He stated that he was informed by several persons in the course of his fact-finding tour that Br. Vadakkan had spoken at the Kuzhalkinar maidan characterising the petitioner as a drunkard and as one indulging in filthy talk. He had reported to the paper the impressions gathered during his peregrinations. The report has been marked as Exhibit VI (a). There is absolutely nothing in Exhibit VI (a) to corroborate Pw. 54, i. e. suggesting even remotely that election propaganda in the constituency had descended to personal recrimination in any quarter. We are therefore not inclined to place any value by Pw. 54's testimony.

57. Respondent has sworn that he attended the meeting at Kuzhalkinar maidan. He is definite that Pw. 27 made no aspersions against the petitioner. He is supported in his evidence by R. Ws. 7, 8 and 10. Of these, R. W. 7 is one whose good offices both parties had solicited, witout success. He swore to be the President of the Karayogam at Nayarambalam. He was therefore a person of respectability in the locality without any party affiliation. He said that he sat through and had listened to the whole speech. His evidence rang true.

58. We have been at a loss to see why petitioner should have marched into the witness box an array of persons who were all found on examination to be interested in him one way or other. It is inconceivable independent testimony was not available for him from among the ten thousand persons who, according to Pw. 14, had assembled to hear Br. Vadakkan at Kuzhalkinar

maidan. Pw. 49 (petitioner's own man) has given the names of some of those persons.

59. The above discussion leads us therefore to the conclusion that the case that Br. Vadakkan made personal aspersions on petitioner's character in the course of his speech at Nayarambalam does not stand substantiated by reliable evidence.

60. So far as the Mattancherry speech is concerned the witnesses speaking are Pws. 40 and 41. Pw. 40 is one who was voted to a seat in the Municipal Council on the K. S. P. ticket. He was also a member of the U. F. L. election committee, and therefore a strong party man of the petitioner. He admits that at the meeting at Mattancherry there were several persons present, whom he knew were wholly non-party-men. Here again therefore petitioner could well have called independent witnesses. Pw. 41 has been put up as one such. He spoke to attending the meeting at Mattancherry and Br. Vadakkan using the language ascribed to him. This man is a tailor living a mile away from where the meeting took place. He gave the date of the meeting as 13-2-1954. He was not able to give the dates of other meetings held at the time which he says he attended, and which prominent people addressed. He also went ahead of the petitioner in regard to what Br. Vadakkan had said. We are clear we could not safely act upon such testimony.

61. There is thus no proper ground for us to hold that Pw. 27 made any personal reflections against the petitioner at Mattancherry either.

62. The point remaining to consider under this issue is whether Br. Vadakkan was "one of the most prominent propagandists of the respondent". Respondent has stoutly denied this, saying that he had no part or lot with Pw. 27. That is also the effect of Pw. 27's own testimony when examined. It must be remembered in this connection that Pw. 27 has been referred to in the petition itself as the leader of what is called 'the Anti Communist Front'. As the name would itself suggest, that was an organisation formed to rally all forces against communism and fight it tooth and nail. Br. Vadakkan has in fact spoken to have been touring throughout the State addressing hundreds of meetings with the avowed object of seeing that communism did not gain a foot-hold. Petitioner himself admits that Pw. 27 addressed at a neighbouring constituency. There is no reliable evidence that in the course of any of the speeches Br. Vadakkan made, he referred to the respondent and canvassed votes specifically for him, as one might expect of one in the position of a propagandist of his, not to say a "most prominent propagandist". Counsel for petitioner argued that at all events, the purport of Br. Vadakkan's speech was to impress on the electorate that the U. F. L. was not worthy of their sufferages and that in effect, the speech was an appeal to the constituents to cast their votes in favour of the respondent. On that basis he proceeded to contend that Br. Vadakkan was a propagandist and agent of the respondent

within the meaning of the electoral law. He relied in this connection on the observations of Willes J. in Westbury (1 O'. M. and H. 47 at 56) "Canvassing may be either by asking a man to vote for the candidate for whom you are canvassing, or by begging him not to go to the poll but to remain neutral, and not to vote for the adversary". We confess we are unable to see the logic of the argument. At best Br. Vadakkan was a volunteer canvasser; may be the effect of his speech was to rally support for the congress ideology. But even if he had canvassed for the respondent *in particular* (for which there is no evidence) "a mere canvasser for the candidate is not the agent of the candidate unless he had authority to canvass" (See Willes J. in Windsor—1 O'. M. & H. 3). In Londonderry (1 O'.M. & H. 276 at 278) Justice O'Brion said "I cannot concur in the opinion that any supporter of a candidate who chooses to ask others for their votes and to make speeches in his favour, can force himself upon the candidate as an agent". In the Taunton case (2 O'.M. & H. 66 at 74) Grove J. stated the law thus:"........to establish agency for which the candidate would be responsible, he must be proved by himself or by his authorised agent to have employed the persons whose conduct is impugned to act on his behalf, or to have to some extent put himself in their hands, or to have made common cause with them, for the purpose of promoting his election. To what extent such relation may be sufficient to fix the candidate must, it seems to me, be a question of degree, and of evidence to be judged of by the election petition Tribunal". There is nothing in this case to warrant our holding that Br. Vadakkan had any authority (expressed or implied) to canvass for the respondent, or indeed, that he canvassed for him, or that respondent put himself in his hands and made common cause with him for the purpose of the election, or that Br. Vadakkan acted with respondent's knowledge or consent in what he did, or that respondent accepted his services or that of the Anti-Communist Front in connection with his electioneering campaign. As Grove J. said in the Taunton case above cited, "mere non-interference with persons, who, feeling interested in the success of the candidate, may act in support of his canvass, is not sufficient, in my judgment to saddle the candidate with any unlawful acts of theirs of which, the Tribunal is satisfied he or his authorised agent is ignorant". On the question of appreciation of evidence the observations of that eminent Judge Willes in Tamworth (1 O.' M. and H. 75 at 84) are emphatic—"No amount of evidence ought to induce a judicial tribunal to act upon mere suspicion or to imagine the existence of evidence which might have been given by the petitioner, but which he has not thought it to his interest actually to bring forward, and to act upon that evidence, and not upon the evidence which really has been brought forward".

63. In India the law has not been differently stated (See also Section 79 (a) of the Act.)

64. We have examined the material placed before us by the petitioner with care, and see nothing in it reliable or sufficient

for us to find that Br. Vadakkan was at all a propagandist of the respondent—not to say his agent.

The first and second parts of issue No. V (a) are found accordingly.

Having regard to the findings above recorded the third part of the issue does not arise.

65. *Issue No. V (b)*. The evidence is no better in regard to the jatha taken out on 31-1-1954 and the slogans said to have been repeated by its members—which constitute the subject matter of this issue. Petitioner's case is that the jatha was taken by Br. Vadakkan in connection with the Kuzhalkinar Maidan meeting on 31-1-1954, and that the people comprising it shouted slogans which in effect depicted the petitioner as a drunkard and a badmesh. The ipsissma verba is given in the petition. It is seen phrased in Malayalam in catchy language, in the form of two couplets. The following will, we think, be a fair translation:

"Even if Mathai smites on the nose
No vote for the U. F. L.
Even if Mathai drinks and raves
No vote for the U. F. L.

Respondent states that to the best of his knowledge no such slogan was shouted in the constituency on 31-1-1954 or on any other date. According to him, petitioner has indulged in reckless allegations because of his enmity towards Br. Vadakkan.

66. We may say to begin with that it is not seriously disputed that there was a jatha on 31-1-1954 in connection with the Kuzhalkinar maidan meeting. What we have therefore to see is (i) whether it was a jatha taken out by Br. Vadakkan and (ii) whether any slogan such as petitioner mentions, was cried out by the participants thereof. Br. Vadakkan when examined denied that he took out the jatha or that he was among the constituents. There is no other evidence on the point—not even petitioner swears he saw Br. Vadakkan anywhere in the procession.

67. As regards the slogan alleged to have been cried out, petitioner relies on the testimony of the following witnesses—Pws. 14, 15, 18, 21, 22, 23, 24, 32, 33, 34, 35, 38, 42 and 43. On the respondent's side Rws. 1, 5, 7, 8 and 10 have furnished evidence.

68. Petitioner saw the jatha when it was about a mile away from its destination. He heard the processionists shout the slogan he has mentioned. According to him the members got "extremely annoyed" on sight of him and "redoubled the vigar of their shouting". A certain portion of the jatha stopped opposite to him for some time and incessantly shouted the slogan. Pws. 14 and 15 also swear to hearing the slogan cried out. Pw. 14 says that the procession consisted of about eight hundred persons among whom were Kumbalan Tomakutty and his wife, Captain Paul and his wife, Menesserri Jacob and his wife,

Cheeraserri Vasu's wife Eliswa and witness's own sister Mary. Kumbalan Thomakutty, Captain Paul and Eliswa have been examined (as Pws. 29, 17 and 16 respectively). They deny this. Pw. 18 saw the jatha at the Vypeen-Pallipuram road. According to him (over and above the persons mentioned by Pw. 14) Ponmani Kochappu and his wife, M. I. Paul and his two daughters (Ammini and Thankom) and Valooran Devassey and others were in the jatha, and all these persons were found crying out the slogan. None of these people are examined. Pw. 21 saw the jatha arriving towards Kuzhalkinar maidan and swears to hearing the slogan shouted. The jatha was then about nine thousand strong, and he found Mampilly Paul, Kumbalan Thoman, and Valooran Joseph among the processionists. The first two (Pws. 17 and 29) have spoken contra, and Valooran Joseph has not been called. Pw. 23 has also sworn to the slogan being shouted. Pw. 24 stated that it was an Anti Communist demonstration and that he followed the jatha with Devssey Valooran, the Panchayat President. According to him, some of the constituents of the jatha were Congressmen, and slogans calling for victory to the Congress were cried out, besides the slogan in question. The Panchayat President has not come before us. Pw. 32 has also referred to the jatha shouting congress slogans. According to him, the jatha started from near the front of the congress election office, and he found in it congress election workers he was familiar with—Volayudhan, Sekharan, Mathew and Michael. Pw. 34 said that the jatha was organised by the Congress, and prominent Congressmen like Panchayat President K. T. George, Valavaserry Jussavi, Chakkalayil Pekko Vaidhian were seen in the company. Pw. 35 was emphatic that it was an Anti Communist Jatha. He heard the slogan being cried out one man starting the cry and the others taking up the refrain. He remembered the fact because of the length of the jatha and the presence of women in it and the fact that Br. Vadakkan addressed the meeting where it culminated! According to Pw. 38 congress slogans and slogans for victory to respondent were also cried out. The majority of the constituents of the jatha were persons who had enthusiastically worked for the respondent in the election campaign. He gave the names of some of these—Thyserri Poru Vakkachan, Karikkaserri Thoman George and Dayanandan. The witness at first palmed himself off as a trader, but later on confessed that he was one without any work or occupation whatever. Pws. 42 and 43 also spoke to the jatha shouting congress slogans and carrying the congress tri-colour and banners displaying the Cogress Election Symbol. According to Pw. 43 all the participants wore Gandhi caps.

69. The striking thing here again is that petitioner should seek to rely on the testimony of people like Pws. 14, 15, 18, 21, 23, 24, 32 and 43—all of whom wore his colours and had assisted him in the election campaign. Pws. 34, 35, 38, 42 and 43 out-heroded him in their testimony, for petitioner himself has no case that the jatha was one organised by the Congress or that congress-men participated in it; It is incredible petitioner would

not have noticed and made capital of the fact when he framed the election petition—if indeed respondent's election workers had joined in the jatba and the congress tri-colour and banners were paraded, and the members of the jetha wore the distinctive Gendhi cep.

70. As against all this Rws. 5 and 7 offer independent and reliable evidence. They are clear that the jetha was an Anti-Communist demonstration, that no slogan such as the one referred to by the petitioner (or any congress slogan for that matter) was cried out. They say that flags of yellow colour with the symbol of the Rising Sun were alone carried by the demonstrators, and the slogans repeated were also Anti-Communist-slogans, and naught else.

71. When petitioner was examined, he admitted that Br. Vadakkan had served on him notice of a defamation suit, *before this election petition was filed.* When he was persued on the matter he started equivocating, and his answers were not forthright. In the circumstances the respondent's suggestion that petitioner had cause for personal enmity towards Br. Vadakkan does not appear quite off the mark; whatever that be, we do not believe the evidence petitioner has furnished. Our finding is that his case on the first part of the issue No. V (b) is not established. The remaining part of the issue does not arise in the circumstances.

72. *Issue No. VI (a)*: Petitioner has last alleged that the Deenabandhu (a newspaper published at Ernakulam) featured in its issue dated 31-1-1954 an article under the caption "Ezhava School will be converted into a toddy shop!". The article is stated to contain three false statements of fact which affect the personal character and conduct of the petitioner inasmuch as it mentioned that

(i) the petitioner once upon a time said that he will convert the B. V. R. Sabha School belonging to the Ezhava community into a toddy shop;

(ii) the petitioner had wilfully made speeches in filthy and indecent language to defeat Sri M. P. Menon and that the same will be remembered by the people;

(iii) the petitioner while speaking at Rajendra maidan (Ernakulam) said that he will belabour Sri Panampilly Govinda Menon with his sandals.

According to the petitioner, the Deenabandhu is a paper conducted under the auspices of leading congress-men in the State and was actually canvassing for the congress through its reports, articles, editorials and advertisements, and that the statements above-said were all made with the connivence of the respondent. The publication of these statements therefore constituted a major corrupt practice under Section 123 (5) of the Act,

73. Section 123 (5) of the Act runs as follows :—

"The publication by a candidate or his agent, or by any other person with the connivance of the candidate or his agent of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate or in relation to the candidature or withdrawl of any candidate, being a statement, reasonably calculated to prejudice the prospects of that candidate's election".

74. It will be noticed therefore, that to constitute a corrupt practice under clause (5) of this section the following elements have to be satisfied :—

(i) There must be a publication of a statement of fact which is false as a matter of fact and which the publisher either knew to be false or does not believe to be true ;

(ii) It must be in relation to the personal character or conduct of the petitioner (as distinguished from his public conduct in connection with political or other activities) or in relation to his candidature or withdrawal ;

(iii) The statement must be one which is reasonably calculated to prejudice the prospects of the candidate at the election ; and

(iv) The publication must be by a candidate or his agent or by any other person with the connivance of the candidate or his agent.

75. The article in question has been marked Ex. C(i) and it may now be examined. It is in Malayalam and is found published in the Deenabandhu of 31-1-1954. The first point arising is whether the article contains the three impugned statements. The Headline translated would run as follows :—

"Ezhavas' school will be made into teddy shop!"

'Narakkal K. S. P. said that day on oath'.

It will be noticed that there is no specific mention whatever in this headline, of the *petitioner* having made such a statement. As the headline stands, the statement is attributed to the Narakkal K. S. P. and the utmost that could be read into it is that, the statement was made by the *Kerala Socialist Party at that place.*

76. There is next a statement referred to, which appears in the body of the article at page 4 of the newspaper. Here is a translation in English of the impugned portion :

"Once upon a time long ago when the residence of the said K. S. P. candidate was near this place, what was it that was tom-tom-ed about ?: If the Ezhavas play too much their school will be made into a teddy shop".

Here again it is not indicated *who* made that statement; certainly we do not find it stated that the said K. S. P. candidate made it. It will be absolutely unwarranted to read into the statement what is clearly not there and speculate as to who might have been possibly meant by the writer as the maker of that statement. In this connection the observations made in the Gurdaspur North (Sikh) Constituency case (Doabia Vol. I. 341 at 347) are opposite and we extract the passage:

> "We are not at all impressed by the argument that the statement contains an innnendo to the effect that S. Bhag Singh had been deceiving the electorate. We feel no doubt that if a charge of this kind is made, it must be sustained by a false statement *directly relating* to the personal character or conduct of the *candidate*, and not one which by indirect implication may be understood as satisfying that mandatory provision of law. The reference to the personal character or conduct of the *candidate* must be *explicit, and derivable* from the plain meanings of the words used. To hold otherwise would, in our opinion, be to nullify the effect of the qualifying clause "in relation to the personal character or conduct of any candidate", for there is hardly a false statement of fact that can he made, relating a person, which cannot by a more or less elaborate process of reasoning, be shown to contain an indirect reference to the personal character or conduct of that person." (italics ours).

77. We are in respectful agreement with the above statement of the legal position. What, in effect, is involved is the scope and ambit of the clause "*in relation to the personal character or conduct of any candidate*" found in Section 123 (5) which is a provision entailing penal consequences. "Where an enactment entails penal consequence no violence must be done to its language in order to bring people within it. On the contrary, care must he taken that no case is included therein which does not clearly come under its express terms. (Maxwell's Interpretation of Statutes, 6th Ed. p. 465)".

78. In the above circumstances it will not be necessary to refer to the evidence adduced by the petitioner in this connection. All the same we will hriefly touch upon it. The witnesses examined are PWs. 45, 47, 30, 54, 53 and 23. Of these Pws. 47 and 30 stated (like the petitioner himself) that there is a reference in Ex. C(i) that the impngned statements were made by the petitioner. That is not a fact as we have already pointed out. Pw. 45 said that the article was such as to create deep resentment in the Ezhava Community and he confessed to resenting it himself. That is absolutely without relevance herein as much as the article does not say the petitioner made the impugned statement regarding the school. Pws. 54 and 23 said that they understood the article as referring to petitioner having been the author of the statements in question. We have already indicated that the law would not warrant our going outside the explicit language used in the statement and so, any evidence as to

who the witnesses understood was the possible maker of the statement is, beside the point. These witnesses have also been discredited in their testimony on other issues already discussed earlier in this order.

79. The two other statements complained of by the petitioner are to be found in the first and second sentences in the closing paragraph of the article Ex. C (i). Translated, the entire paragraph would read thus: "Let the story of the driving away of M. P. Menon who from the K. S. P. platform deliberately poured foul abuse and carried on counter-propaganda be remembered by the public. At Rajendra Maidan this K. S. P. candidate stated" "I will pull off the sandals and beat Panampilly". To this the sensible voters of Ernakulam gave the reply "Don't come here with speeches of this sort". It is understood comrade has not gone there since".

80. Clearly the reference in the above statement is explicit that the Speaker was Sri M. P. Menon. When examined Sri M. P. Menon as P.W. 53 said that the reference was to the petitioner. That is belied by the statement itself.

81. Our conclusion is that we are unable to see anything in any of the impugned statements in Ex. C(i) to justify our finding that they were made in relation to the personal character or conduct of the *petitioner*. In the circumstances the question whether the statements were false and whether they were published in the belief that they were false or that they were not true would not arise. We also hold that there is nothing to persuade us to find that the publication of the statements was calculated to prejudice the prospects of the petitioner at the election.

Issue VI (a) found accordingly.

82. *Issue No. VI (b)*: raises the question whether respondent connived at the above publication. The evidence does not shew that respondent had any connection with the Deenabandhu paper except as a subscriber (as he has been a subscriber for other papers i.e., the Hindu, Manorama and Mathrubhoomi). He swears he did not read Ex. C (i) until after he got notice of the election petition. According to him, in the stress and strain of the election campaign, he had no time to look through any paper. There is no case—not to say proof, that anybody brought Ex. C(i) to the notice of the respondent before he saw it himself. We have therefore no reason to disbelieve him. It was argued that the respondent being a subscriber a presumption would arise that he had knowledge of the contents of the paper and that it was for the respondent to make out that he had no knowledge. We have not been referred to any authority that such a presumption (as has been contended for) would arise. Even if respondent had been carrying the paper about with him, it would not affect the position, for as Bowen L. J. said in Emmens V. Pottle (1885) 16 Q. B. D. at page

358) "A newspaper is not like fire. A man may carry it about without being bound to see that it is likely to do an injury".

83. It has not been suggested that the publication was made with respondent's prior knowledge or that he had known and seen the writer and had been consulted on it. In these circumstances it is wholly idle to contend that there has been any connivance of the respondent so far as this publication is concerned. We hold there is na proof of the connivance set up. That is our finding on issue No. VI (b).

84. Counsel for the petitioner advanced an argument alternatively that there existed the relationship of principal and agent as between the respondent and P. W. 31, (who was then the editor, printer and publisher of the paper) within the meaning of the election law. In this behalf he pointed out that respondent was set up by the Congress Party as their candidate, that the then President of the Provincial Congress Committee was the managing director of the company that owned the paper, that the editor himself was a leading Congress man and the paper was actively canvassing for the Congress through its editorials, reports, articles and advertisements.

85. We must observe to begin with, that the petitioner has not set up any specific case that P. W. 31 (the editor, printer and publisher of the paper) was the agent of the respondent by any means. Nor was the question put into controversy when issues were settled, which was done in open Court after hearing both parties. There was no application subsequently made either, for any additional issue on the point. But we do not want to dispose of the contention on that technical ground; so we proceed to investigate whether it stands sustained on the evidence led in the case.

86. Mr. K. P. Madhavan Nair, who was then the President of the Provincial Congress Committee has been examined as P.W. 59. He has sworn that the paper bad received contributions from the Congress Party, that Congress election symbols (Ex. K. series) and Congress advertisements have appeared in the paper and further that a letter of thanks addressed by him to the voters of the State in general was published in its editorial columns. But it is seen that apart from being President of the Provincial Coagress Committee P. W. 59 was a business man on his own account, that he was one of the original promoters of the company that owned the paper long before he became the President of the District or Provincial Congress Committee, that the paper had received contributions from other associations and public bodies as well, that P. W. 59 himself had advanced sums amounting to a considerable figure and that the balance outstanding due to him on the date of Ex. T stood in the neighbourhood of Rs. 22,000, that other persons have also advanced loans to the company which has been running at a loss, that the profits and losses of the concern are borne entirely by the company, that in respect of the advertisements and other matter printed

for the Congress party, payment is made from the party's funds to the company, that the paper used to publish in its editorial columns important statements from prominent people, that the thanks-giving letter (which is a signed one) has appeared not only in the Deenabandhu, but in other papers and periodicals besides, and that the Deenabandhu is not the official organ of the Congress party.

87. There is no reason not to accept the above statements made by P. W. 59 on oath. The petitioner himself has not stated in the petition that the paper is the official organ of the Congress party; his own description is, it is "a daily paper published by Sri V. Narayana Menon, B. Sc. (Ag.), *for the Deenabandhu Printing Company*." (italics ours). It is however gatherable from Exs. Y (1), Y (15), Y (26) and Y (27) that the paper published some editorials advocating the Congress cause and it may be proper therefore to regard the Deenabandhu as a supporter of the Congress policy and the principle of the party stands for.

88. But that is far different from saying that the paper or its editor at any time functioned as the agent of the *respondent* at the elections. Not a single editorial has been brought to our notice to show that the paper had at any time officially pleaded the cause of *the respondent as such* in the elections. There is nothing to show that the respondent had any connection with the paper excepting (as has been pointed out) as a subscriber, even as he was a subscriber in respect of other papers. It was not suggested he had lent any moneys or contributed to the funds of the Deenabandhu or that he had any way associated himself with its conduct. He no doubt sent up his election appeal to be published in that paper and that is Ex. XIII (a), but that was published, according to him, in other papers also and he has not been contradicted. The point to note is that in respect of the advertisements and the Election appeal published in the Deenabandhu by the respondent, he had to pay the company their charges for such publication even as the congress party itself. Ex. XVI has been placed before us as the voucher issued by the Deenabandhu for charges paid by the respondent for the publication made, and it is also seen that these payments had been included in the return of election expenses that respondent has filed.

89. The question may arise whether by reason of the fact of respondent being a member of the Congress party and its candidate at the elections, the party and members thereof like P. W. 31 could be considered as the respondent's agents so as to make the respondent liable for the acts of the party or of P. W. 31 or of any other of its members. The circumstances in which, by reason of the relationship between a candidate and the association to which he belongs, the association or any of its members could be regarded as the agent of the candidate has been the subject matter of consideration by election judges in several cases. We might usefully advert to some of them:—

In the Bewdley case (3 O'. M. & H. 145 at 146) Justice Lopes observed "There may be doubtless in a borough a political association existing for the purpose of a political party advocating the cause of a particular candidate and largely contributing to his success, yet in no privity with the candidate or his agents, an independent agency, acting on its own behalf. To say that the candidate should be responsible for the corrupt acts of any member of that association however active, would be unjust, against common sense, and opposed to law. There may, on the other hand, be a political association in a borough advocating the views of a candidate, of which that candidate is not a member, to the funds of which he does not subscribe, and with which he personally is not ostensibly connected, but at the same time in intimate relationship with his agents, utilised by them for the purpose of carrying out his election, interchanging communication and information with his agents respecting the canvassing of voters and the conduct of the election, and largely contributing to the result. To say that the candidate is not responsible for any corrupt acts done by an active member of such an association would be repealing the Corrupt Practices Act, and sanctioning a most effective system of corruption." In Walsall (4 O'.M. & H. 124) it was held that an association which confined itself to carrying out the general interest of the political body and the views it represented and abstained from becoming the active assistant of a particular candidate is not an agent. In Westbury (3 O'.M. & H. 78) a political association had invited a candidate to become their representative whereupon he attended some of their meetings to expound his political views. The connection between them thereupon ceased, the candidate and the association took separate offices and there was no interchange of information between them or communication beyond an occasional inquiry to know how matters were going on—The judges declined to adopt the view that the candidate had so recognised and accepted the services of the association as to make each member his agent. But where an association had been formed before the election to promote the candidature of a certain candidate, and was subsequently in constant communication with his election agent, who attended the meetings of the association, supplied its minute book at the candidate's expense, from time to time reported progress to the association, and used, in common with the association, a marked register of voters, and the Secretary of the association was employed at the agent's private house as a paid clerk of the candidate, the leading members of the association did the work of a committee, and one of them canvassed, and was actively engaged on the polling day in taking members to the poll—the judges held that the candidate was responsible for the acts of the members of the association (Bewdley, 3 O'.M. & H. 145 at 146). Again where an association divested themselves of their more general constitution, and became active in the assistance of a particular candidate, it was said, they may be held to be his agents (Walsall, Day. 107). Where a political association had an existing local

organisation with committee and officers, which the candidate and election agent adopted and utilised for election work and the association in fact arranged the meetings that were held and "took a direct part in the fighting line," it was held that the association were agents of the candidate (East Cork, 6 O'M. & H. 340).

90. In the present case there is absolutely no suggestion that either the President of the Congress committee or any official thereof entered the fighting line to support the respondent's candidature as such, nothing to show that they took any electors to his poll or that the party officials in their official capacity organised any committee to aid him in the campaign or that the respondent or his agent reported to the Congress party and its officials the progress of his election campaign and took instructions from them as to its conduct. Not a single question on the point was addressed by learned counsel for the petitioner to the President of the Provincial Congress Committee when he was on the box. The respondent is seen to have received a contribution from the Congress party for the election campaign, but he was one of the 115 candidates who had been set up, many of whom were similarly assisted. We are not prepared to hold that the circumstances placed before us in the evidence are such as would be sufficient to warrant the view that any sort of privity existed between the party and the respondent so as to constitute the party or the members thereof his agents under the election law.

We are therefore clear there is no substance in the alternative contention, advanced by counsel on behalf of the petitioner. Even otherwise the result is not affected in view of our finding that it has not been established by evidence that the statements published in the Deenabandhu which have been impugned by the petitioner infringe Section 123 (5) of the Act.

91. *Issue No. VII.* Petitioner has not established that the election was vitiated by any corrupt practice. So the question whether the result has been materially affected does not arise. The first part of the issue is found accordingly.

92. Respondent has sworn that before starting the election campaign he called together a meeting of his workers and enjoined on them that they should carry on the election propaganda in such a way as would fit in with the reputation of the Congress, that they should set before themselves a high standard of conduct and avoid soliciting votes on any personal, communal, caste, or religious basis and that on no account should they indulge in any personal recrimination. He says he used to check up whether these instructions were being followed and he found that they were in fact followed. In view of this evidence and because petitioner has not made out the contrary, our finding on the second part of issue VII will be for the respondent. We have no reason to hold that his election is liable to be declared void. The third part of the issue is answered accordingly.

93. *Issue No. VIII.* There is no proof of any undue influence. Issue found against.

94. *Issue No. IX.* Here again there is no proof and our finding will be against the petitioner.

95. *Issue No. X.* Costs will follow the event.

96. Under Section 99 of the Act when any charge of corrupt practice is made, the Tribunal has to record a finding whether or not the charge has been proved. For the reasons we have stated above we record the finding that the petitioner has not substantiated the charges of corrupt practice that he has made against any of the persons specified by him in the list of particulars including Sri V. Narayana Menon, the then editor of the Deenabandhu.

97. The result is the petition fails. It is dismissed with cost to the respondent, and we assess such costs inclusive of advocates' fee at Rs. 1000 (One Thousand) having regard to the length of the trial and the fact that petitioner has failed to make out every one of the charges he has levelled in the case.

Finally before we close it is only proper that we place on record our appreciation of the valuable assistance that we received from counsel in the trial of this Election Petition.

Announced in open Court, this the 20th day of April 1955.

(Sd.) Chairman.

(Sd.) P. D. THOMMAN Member.

(Sd.) T. S. VENKITACHALA IYER Member.

(True copy.)

K. SANKARANARAYANA IYER,
Chairman.

ANNEXURE A.

ELECTION TRIBUNAL, ERNAKULAM.

Saturday, the 23rd day of October 1954.

PRESENT

Sri K. Sankaranarayana Iyer, B. A., B. L.	Chairman.
Sri P. D. Thoman, M. A., B. L.	Member.
Sri T. S. Venkitachalam, B. A., B. L.	Member.

M. P. Nos. 2, 4 and 5 of 1954
in
Election Petition No. 8/1954.

Mathai Mathew Manjuran — Election Petitioner—Petitioner in M. P. Nos. 4 and 5 of 1954 and Counter-petitioner in M. P. No. 2/1954.

By Advocates Messrs. T. K. Narayana Pillai and S. Prabhakaran Nair.

K. C. Abraham — Respondent—Petitioner in M. P. 2/1954 and Counter-petitioner in M. P. 4 and 5 of 1954.

By Advocates Messrs. P. Govinda Menon, E. V. Mathew, M. V. Poulose, and E. V. Abraham.

The above miscellaneous petitions having been heard on 15-10-1954 and 23-10-1954, the Tribunal on 23-10-1954 delivered the following

ORDER.

On 30-9-1954 the petitioner Mr. Mathai Mathew Manjuran was questioned by us as to how in the nature of the frame of Section 84 and 98 of the Act, he would be entitled to claim and this Tribunal competent to grant, both the reliefs that he had asked for in his petition *viz.* to have the election of the respondent declared void, and to have the election declared wholly void. Immediately, the petitioner and his counsel stated that the petitioner was confining his claim to the major relief under Section 84 (c) and that the prayer in the election petition may be modified accordingly. This fact was put in writing by the petitioner and his learned counsel on the back of the election petition and also recorded in our proceedings. Subsequently, i. e., on 8-10-1954, learned counsel appearing for the respondent moved an application stating that as the petitioner had confined

his claim te the relief under Section 84 (c), the averments leading te the relief under Section 84 (a) as well as the issues Nes. 4 to 7 raised upon these averments de net require consideration, and therefore that those issues may be struck off. When this application was meved, counsel appearing for the electien petitioner invited eur attention te twe petitions that he had filed, the first, requesting permission to withdraw the statement that petitioner bad made on 30-9-1954, and the second, for leave to amend the electien petition so as te enable him to claim either the relief under Sectien 84 (a) er the relief under Sectien 84 (c) in the alternative. It has accordingly become necessary te consider (i) whether the application for withdrawal of the statement made by petitioner en 30-9-1954 can be allowed; (ii) whether the emendment sought, can be granted and (iii) whether the prayer fer strike off of issues Nos. 4 to 7 can be acceded to.

2. Regarding (i) we have no doubt as to what actually bappened. The questien as to his right to claim cumulative reliefs, was put te the election petitioner by the Tribunel, and immediately the question was put, the petitioner and his counsel represented that they were confining their prayer te the major relief under Section 84 (c). Petitioner now says that the said representation was made on the spur of the mement and witbout preper reflection, and be has prayed for leave te witbdraw the statement. That the ceurt has power to permit a withdrawal in appropriate cases, cannet be gainsaid, and in this cennection we have enly te refer te 1950 Travancore-Cochin Law Reports 396. Learned counsel appearing fer respondent does not alse dispute this. Considering the fact that we bave net passed any orders on the petitioner's statement, and the circumstances under which the statement itself happened te be made, we are inclined te accept the petitioner's prayer and sanction the withdrawal he has wanted.

3. Even etherwise, i. e., assuming that the election petition stands with only the relief under Section 84 (c) cleimed, we do net see why the election petitioner should not be permitted te amend the petition se as to intreduce inte it a prayer under Section 84 (a) alse, and claim either relief in the alternative. Mr. Gevinda Menon, ceunsel fer respendent, though he started differently, does net new seriously challenge our jurisdiction te allow the amendment. In this case it alse happens that all the averments that would lead te the relief under Section 84 (a) are already there in the petition. Those averments have not been withdrawn. Further, the petitiener went into the bex on 30-9-1954 i.e., after be made the statement adverted te, and he was examined and cross-examined in respect of all the averments in the petitien including these that bear on the relief under Section 84 (a). Therefore there is no question ef any prejudice; and indeed, learned counsel fer the respondent candidly teld us today, that he bad no case at all that his party will in any way be prejudiced if the amendment were allewed. In this situation, and baving regard te the observatiens ef the

Supreme Court in Basappa's case (A. I. R. 1954 S. C. 440), leave to amend cannot be denied and the prayer in this regard has therefore to be granted.

4. The question then remains whether the respondent's application for strike off of issues Nos. 4 to 7 can be agreed to. It must be noticed here that the application was put in on the basis that the petitioner has confined his claim to the relief under Section 84 (c) alone. Now that we are allowing the amendment and permitting the election petitioner to claim relief under Section 84 (a) in the alternative, the foundation is gone, and therefore the respondent's application can be rejected on that short ground. But it is as well, we advert to certain other aspects that present themselves. The petitioner has made serious charges of undue influence and other corrupt practice in the main petition, and he has appended (as required under the Act) a list particularising the corrupt practices, their nature and extent and the persons responsible therefor. We will be grossly failing in our duty if we refuse to investigate into those charges and give our finding whether or not the charges have been substantiated. The mandate to the Tribunal is quite clear to us from the wording of Section 99 of the Act; and quite recently, Their Lordships of the Supreme Court had also occasion to point this out in unmistakable language (See A. I. R. 1954 S. C. 210).

5. Learned counsel appearing for respondent argued that we are not an inquisitorial body charged with the duty of investigating whether any corrupt practices have been committed in connection with the elections, and he referred us to certain enactments including the Penal Code to shew that the aggrieved party has other remedies open to him. While we agree we are not sitting as a commission constituted to unravel and expose cases of corruption, we cannot see how we can get away from the plain implications of Section 99 when once the return of the respondent has been called to question on grounds of corrupt practice, and the petition has been placed before us for disposal in the manner prescribed by law. If the intendment of the framers of the Act was that the investigation under Section 99 should be confined to those averments only as could be related to the relief claimed, that would have been made clear in appropriate manner. The expression "any corrupt or illegal practice" need not have been introduced there without qualification, as has been done.

6. There is another compelling fact that has to be noticed. An election petition and its trial cannot be equated to the plaint in a civil suit and its trial. Whereas in the latter case the issue is mainly one between party and party; in the former, the whole constituency is, in a sense, involved. That appears to us to be the general scheme of the Act. Thus for instance, an election petition cannot be terminated at the will of the petitioner, nor even by his death, without giving an opportunity (to continue it) to others in the constituency who might have been

petitioners. Chapter IV—Part VI contains elaborate provisions in respect of withdrawal and abatement of election petitions for which we could find no parallel in the Civil Procedure Code. Section 99 is another such instance. These provisions have been made, to use the language of Andrews J. in the North Meath case (1892) 4. O'M. & H. 187 to "render it impossible for the court to sanction any concession which may have the effect of precluding that full disclosure of facts which it was one of the objects of the Statute to provide for, or of preventing that thorough investigation of all the charges relied on by the petitioner so far as the conrt has the means to do so within its reach" in order that the purity of the election process might be ensured, and its integrity conserved and safeguarded.

7. Mr. Govinda Menon made a desperate attempt to salvage his position by referring us to Section 138 of the Representation of the People Act 1949 (England) and the earlier Statute Law on which it is based, and by drawing our attention to the observations of Willes J. in the Southampton case (1869) I. O'M & H. 222 at page 227. We see nothing in these citations to warrant the restricted interpretation he has contended for. The same eminent Judge observed in Windsor (1869) 1. O'M. & H. 7 "I consider my duty to be judicial and not inquisitorial, excepting in so far as it would be proper that I should follow up any clue which the evidence laid before me by the one side or other may furnish............It is only where a clue to the existence............of corrupt practices is presented by the evidence properly and formally laid before me, that I shall think it necessary..............to send for parties and papers with a view to investigate a subject which I consider to be out of my jurisdiction". In Stroud (1874) 2. O'M. & H. 109 Bramwell, B. said he agreed with these observations. In Evesham (1880) 3. O'M. & H. 95-96) the court intimated that if in the course of the trial of a petition something is brought to their attention which shows that there has been corruption in the borough, it would be their duty to report that corruption to the House (See Fraser's The Law of Parliamentary Elections and Election Petitions—Third Edition—Page 232).

8. In this state of the law, it is difficult for us to agree that issues Nos. 4 to 7 should be scrapped.

9. The result is the election petition will be so amended as to make the reliefs claimed under Section 84 (a) and 84 (c) as for one or other in the alternative. The respodent's application for strike off is dismissed.

There will be no order as to costs.

Announced in open court, this the 23rd day of October 1954.

Chairman (Sd.)
Member (Sd.) P. D. Thomman.
Member (Sd.) T. S. Venkitachalam Iyer.

(True copy)

K. Sankaranarayana Iyer,
Chairman.

ANNEXURE—B.

ELECTION TRIBUNAL, ERNAKULAM.

Tuesday, the 14th day of December 1954.

CORAM,

Sri K. Sankaranarayana Iyer, B. A., B. L. .. Chairman.
Sri P. D. Thomman, M. A., B. L. .. Member.
Sri T. S. Venkitachalam, B. A., B. L. .. Member.

M. P. No. 15 of 1954.
in
Election Petition No. 8/1954

Dr. Joseph Attippetty, PHD., DD.,
Archbishop of Verapoly, Latin
Archbishop's House, Ernakulam.

By Advocate Sri V. K. K. Menon .. Applicant,

Sri Mathai Mathew Manjuran
By Advocate Sri G. V. Ramanan .. Petitioner in E. P. 8/54.

ORDER.

His Grace the Most Rev. Dr. Attippetty, Archbishop of Verapoly (a witness called by the petitioner) has filed this application claiming to be examined on commission on the ground that he has been exempted from appearance in Court by a Notification issued by the Travancore-Cochin Government, No. CJ. 4-4554|54|CS. dated 2nd November 1954. The petitioner stoutly opposes; his contention being, that Section 133 (1) C. P. C. under which the Notification has been issued offends the principle of equality before the law enshrined in Article 14 of the Constitution and therefore that it is void under Article 13. As the matter in controversy related to the constitutionality of a statutory provision we issued notice to the Advocate General. At his instance Mr. V. Rama Shenoi, Government Pleader, appeared, and we had the advantage of hearing him, besides learned counsel for the Archbishop and the contesting petitioner.

2. Mr. V. K. K. Menon appearing for the Archbishop first raised a preliminary objection. He said the question whether a law or statutory provision was ultra vires the constitution or not, was solely for the judiciary to consider and decide, and that this Tribunal had no jurisdiction to go into the matter. Secondly he submitted, that assuming the Tribunal had jurisdiction, it was not open to the petitioner who had claimed relief under the Representation of the People Act, to impugn any of the provisions of that Act. In this connection he contended, that Section 133 C. P. C. must be read as part of the Representation of the People Act. We do not think it necessary to go

into this second part of Mr. Menon's argument, as we are clear that he should succeed on the preliminary objection. We shall immediately indicate our reasons.

3. Under the Indian Constitution the powers vested in the Legislature and the Executive are not plenary; they are subject to definite limitations. These limitations may be broadly classified into two:—(a) those arising in view of the guarantee of Fundamental Rights under Part III, and (b) those relating to Legislative competence. An examination of the various articles makes this clear. Thus Article 13 of the Constitution declares in substance that any law contravening any of the provisions of Part III relating to Fundamental Rights shall be void. Articles 251 and 254 are to the effect that when there is repugnancy between the Union and State laws, in certain cases, the State law will to the extent of such repugnancy be void. Article 246 contains the provision that in regard to matters covered by List II (State List), the State Legislatures have "exclusive powers" while Article 245 makes both the powers of Parliament and State Legislatures "subject to the provisions of this Constitution." That it is for the Courts (meaning the judiciary), to decide, whether there has been a contravention or transgression of the limitations imposed by the Constitution, has been unmistakably indicated by the Supreme Court in A. K. Gopalan's case (A. I. R. 1950 S. C. 27). At page 42 of the report, Chief Justice Kania observes "But it is only in express constitutional provisions limiting legislative power......that one can find a safe and solid ground *for the authority of Courts of justice to declare void* any legislative enactment..................." At page 91 Justice Mukherjea has stated "it is for the *judiciary* to decide whether any enactment is unconstitutional or not". The point has been again emphasised in State of Madras *v.* V. G. Row in A. I. R. 1952 S. C. 196 at page 199 by Patanjali Sastri C. J. in the following words............"we think it right to point out, what is sometimes over-looked, that our Constitution contains express provision for judicial review of legislation as to its conformity with the Constitution, unlike in America where the Supreme Court has assumed extensive powers of reviewing Legislative acts under cover of the widely interpreted "due process" clause in the Fifth and Fourteenth Amendments. If then, the Courts in this country face up to such important and none too easy task, it is not out of any desire to tilt at Legislative authority in a crusader's spirit, but in discharge of a duty plainly laid upon *them* by the Constitution". Observations to the same effect have been made by Their Lordships of the Calcutta High Court in Special Bench in the case reported in A. I. R. 1950 Cal. 272 at page 277. After stating that.......... "The Legislatures in this country have only those powers of Legislation which are bestowed upon them by the Constitution Act", and that "If they pass an Act in excess of those powers, then that Act becomes void to that extent", Their Lordships pose the question "who is to decide the question whether a piece of Legislation is void or not?" And they answer; "Under our

Constitution the *courts* i. e. the Judiciary are to decide this, and *nobody else*". (italics ours). While therefore, we have it on the highest authority that it is for the Judiciary to pronounce on the constitutionality of a legislative Act, articles 131 to 136 and 228 of the Constitution make it clear to our minds that this function is limited to the Supreme Court and the High Courts. The words "has not been so declared by the High Court to which that court is subordinate or by the Supreme Court" in the Proviso to Section 113 C. P. C. also point to this.

4. Learned Government Pleader referred to Warriam Singh and another *Vs.* Amarnath (1954 S. C. appeals 334) and submitted that under Article 227, the Constitution had vested in the High Courts, powers of judicial and administrative superintendence over every court and tribunal within the territorial limits of their jurisdiction. In the circumstances, he argued, that this Tribunal was a "court", "subordinate" to the Travancore-Cochin High Court, and that the procedure indicated in Section 113 C. P. C. quoted above should be followed. In other words, according to him, it was not as if this Tribunal had no jurisdiction to entertain and consider the objection raised by the petitioner ; the inhibition lay in the Tribunal declaring the impugned provision invalid and inoperative. If we were inclined to that view, then, considering that neither the Supreme Court nor the High Court of Travancore-Cochin had so far pronounced on the matter, our duty, according to him, was to state a case setting out our opinion and refer the same to the High Court for its opinion.

5. We cannot agree the position taken by the Government Pleader is correct. There is no doubt the supervisory jurisdiction of the High Court over this Tribunal under Article 227 is both administrative and judicial, having regard to the clear pronouncement of the Supreme Court on the matter. But to argue that the Election Tribunal is a "subordinate court" within the meaning of Section 113 (so as to make a reference from us competent) is to pursue a line of reasoning for which we see no warrant. Section 113 occurs in a statute designed "to consolidate and amend laws relating to the procedure of the courts of Civil Judicature". Section 3 thereof specifies that "For the purposes of this code"..........which must mean for the purpose of every section of that code including Section 113 "the District Court is subordinate to the High Court, and every civil court of a grade inferior to that of the District Court and every Court of Small Causes, is subordinate to the High Court and District Court". This Tribunal comes nowhere in that picture ; it does not form part of the judicial hierarchy, and we are not able to conceive how it can be fitted into that frame-work. The Constitution itself makes a distinction between "court" and "tribunal" as Articles 136, 227 and 228 make clear. In Article 136 which deals with the power of the Supreme Court to grant special leave to appeal, the words "court or tribunal" appear. In Article 227 whereunder the High Courts are vested with the power of superintendance, the expression "courts and tribunals"

occurs. In Article 228 which relates to the transfer of certain cases to the High Court, the reference is to "court" and the word "tribunal" is omitted. It cannot be the framers of the Constitution used these words in juxtaposition if "court" and "tribunal" meant exactly the same thing and the expressions were synonymous. The only reasonable explanation is "the word "court", has a wellknown meaning in legislative history and practice". (Per Mahajan J. in Bharat Bank V. Employees of Bharat Bank....A. I. R. 1950 S. C. 188 at page 195.

6. In the case above referred to, the question that arose for consideration by the Supreme Court was whether leave to appeal under Article 136 would be competent from the award of an Industial Tribunal. The majority of the judges including Kania C. J., held that leave to appeal would be competent. In the course of the discussion the Chief Justice pointed out that though the functions and duties of an Industrial Tribunal are very much like those of a body discharging judicial functions, "it is not a *court*" (See page 189). Mahajan J. (as he then was) expressed himself thus: As pointed out in picturesque language by Lord Sankey L. C. in Shell Co. of Australia *v.* Federal Commissioner of Taxation, (1931) A. C. 275: (100 L. J. P. C. 55), there are tribunals with many of the trappings of a court which nevertheless, are not Courts in the strict sense of exercising judicial power. It seems to me that such tribunals though they are not full-fledged Courts, yet exercise quasi-judicial functions, and are within the ambit of the word "tribunals" in Article 136 of the Constitution. It was pointed out in the above case that a tribunal is not necessarily a Court in this strict sense, because it gives a final decision, nor because it hears witnesses on oath, nor because two or more contending parties appear before it between whom it has to decide, nor because it gives decisions which affect the rights of subjects nor because there is an appeal to a court, nor because it is a body to which a matter is referred by another body. The intention of the Constitution by the use of the word "tribunal" in the article seems to have been to include within the scope of Article 136 tribunals adorned with similar trappings as "Courts", but strictly not coming within that definition" (See page 195). His Lordship thus took the view that the word "tribunal" has to be construed liberally and not in any narrow sense and an Industrial Tribunal, in as much as it discharged functions of a judicial nature in accordance with law, came within the ambit of Article 136 of the Constitution. Justice Mukherjea in a dissenting judgment said that the process employed by the Industrial Tribunal is not judicial process at all, and that it had no power to make a final pronouncement which would *pro priovigore* be binding on and create rights and obligations between the parties. In that view His Lordship held that Article 136 did not contemplate a determination by the Industrial Tribunal. Patanjali Sastri J. (as he then was) agreed.

What is relevant to the present discussion and important to note is, that there was practical unanimity of high judicial opinion that the Industrial Tribunal is not a court,

7. The position regarding the Election Tribunal may now be examined. It is a body created by the Election Commission in whom under Article 324, the Constitution has vested certain exclusive powers including the appointment of Election Tribunals "for the decision of doubts and disputes arising out of or in connection with Elections to Parliament and to the Legislatures of the State". Article 327 provides that "Parliament may from time to time by law make provision with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of Legislature of a State". By virtue of the powers vested in it under this article, Parliament has enacted the Representation of the People Act (amended in 1951) " to provide for the conduct of elections to the Houses of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of these Houses, the corrupt and illegal practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections". "Section 86 of that Act provides for the appointment of the Election Tribunal and also deals with its composition among other matters. Section 90 sub-section 2 prescribes the procedure to be followed by the Tribunal and it shows that the provisions of the Code of Civil Procedure will not be applicable wholesale, but only "as nearly as may be" and "subject to the provisions of this Act". Sub-section 3 says likewise in regard to the Evidence Act, that it will apply only "subject to the provisions of this Act". Section 92 mentions that the Tribunal will have in respect of the matters specified therein "the powers which are vested in a court under the Code of Civil Procedure". It is later on provided in that Section that the Tribunal "shall be deemed to be a civil court within the meaning of Section 480 and 482 of the Code of Criminal Procedure" suggesting thereby *that it is not so otherwise*. Chapter IV in Part VI contains provisions relating to abatement and withdrawal of Election Petitions which are peculiar, and Section 99 vests in the Tribunal certain extraordinary powers in the matter of enquiring into corrupt practices that constitute another novel feature. Section 105 makes its decision "final and conclusive" but under Section 107 it is provided that "an order of the Tribunal under Section 98 or 99 shall not take effect until it is published in the Gazette of India."

8. The above survey of the various provisions of the Representation of the People Act makes it clear beyond doubt that the Election Tribunal which is a creature of that Statute is not a "Court" in the proper sense of the term although the Tribunal has some of its "trappings".

9. Mr. Shenoi invited our attention to the use of the expression "subordinate Court" in 1954 S. C. A. 334 at page 338 that he had cited. On a careful reading of that judgment we do not find any warrant for his contention that the Supreme Court referred to the Rent Controller as a "subordinate court". On the other

hand what was said was that it is a "tribunal" within the meaning of Art. 136 and over it the High Court had both administrative and judicial superintendence. In a later case Durga Shankar Metha *vs.* Reghuraj Singh (A. I. R. 1954 S. C. 520) which was an appeal taken under Special leave under Art. 136 of the Constitution from the decision of an Election Tribunal, the Supreme Court has said that "it is now well settled .... that the expression "tribunal" as used in Art. 136 does not mean the same thing as "Court" (See page 522).

10. The contention of the learned Government Pleader that the Election Tribunal is a subordinate court within the meaning of Section 113 C. P. C. does not therefore bear examination. We are clear we cannot act under that section and a reference from us to the High Court will not be competent. The contention is accordingly repelled.

11. Mr. Ramanan for the petitioner brought to our notice the decision of the Election Tribunal in Election Petition No. 89 of 1952 Sumer Singh *vs.* Thakur Durbat and others (7 E. L. R. 171) where the validity of Section 2 of Act VII of 1952 was impugned as infringing Art. 14 of the Constitution and the question was gone into. It does not appear to us from a perusal of the order that the competency of the tribunal to consider the objection was put into controversy. We do not think therefore that that case affords us any assistance.

12. The result is the preliminary objection must succeed. We hold we have no jurisdiction to pronounce on the constitutionality of the impugned provision (Section 133 (1) C. P. C.) in exercise of the powers under which, Government have issued the notification relied on by the Archbishop. In that view we do not feel called upon to go into the merits of the contentions raised by the petitioner in opposing M. P. 15 of 1954.

The prayer of the Archbishop for his examination on commission accordingly stands allowed.

There will be no order as to costs.

Announced in open court, this the 14th day of December 1954.

Chairman (Sd.)
Member (Sd.) P. D. Thomman.
Member (Sd.) T. S. Venkitachala Iyer.

(True copy)

K. Sankaranarayana Iyer,
Chairman.

(By order)

(Sd.) K. S. Rajagopalan,
Assistant Secretary to the Election Commission.

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